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In this issue

Emily Braun and Pepe Karmel on The Leonard A. Lauder Cubist Collection

Reports from IFAR's Art Authentication Research Service

Purloined Stradivari

Restitution Roulette

Operation Hidden Idol

INCORPORATING

STOLEN ART ALERT®

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IFAR® Journal
INTERNATIONAL FOUNDATION FOR ART RESEARCH

2 IN MEMORIAM – John Henry Merryman

3 NEWS & UPDATES

3 The Case Against Kapoor: "Operation Hidden Idol" and the Undoing of an Accused Antiquities Smuggler

8 Last of 5 Banco Santos Artworks Seized in U.S. Are Back in Brazil

11 Court Rules for Madrid Museum in Dispute Over Pissarro

13 Convicted Fraudster Claims de Koonings Are Fake; Court Experts Agree

16 U.S. Court Rejects Poland's Extradition Request for Art Dealer with Nazi-Looted Work

19 THE PURLOINED STRADIVARI
Carla Shapreau

23 A CASE OF MISTAKEN IDENTITY: IFAR INVESTIGATES A "JACKSON" POLLOCK AND UNCOVERS HIS BROTHER CHARLES
Lisa Duffy-Zeballos and *Sharon Flescher*

28 THE DE KOONING THAT WASN'T: A BAD PENNY RESURFACES (AS A PHONY NICKEL)
Lisa Duffy-Zeballos

32 THE LEONARD A. LAUDER CUBIST COLLECTION: A CONVERSATION WITH EMILY BRAUN AND PEPE KARMEL
An *IFAR Evening*, February 10, 2015
Emily Braun and *Pepe Karmel*

56 RESTITUTION ROULETTE: A COMPARISON OF U.S. AND EUROPEAN APPROACHES TO NAZI-ERA ART LOOTING CLAIMS
Thomas R. Kline

67 STOLEN ART ALERT®

COVER: PABLO PICASSO (Spanish, 1881-1973). ***The Scallop Shell: "Notre Avenir est dans l'air,"*** spring 1912. Enamel and oil on canvas. Leonard A. Lauder Cubist Collection. Ph. MMA. © 2015 Estate of Pablo Picasso/ARS NY.

IN MEMORIAM

JOHN HENRY MERRYMAN

1920 – 2015

IFAR LAW ADVISORY COUNCIL MEMBER 1986 – 2015
SCHOLAR; TRUSTED ADVISOR; FRIEND

WE WILL MISS YOU

John Henry Merryman is a giant in the fields of art and cultural property law.

In 1969, after revitalizing the field of comparative law, Professor Merryman turned his attention to the fledgling field of art law. A year later, with his friend Albert Elsen, the Rodin scholar, John created the first art law course at Stanford Law School. The text for that course, *Law, Ethics and the Visual Arts,* is a classic now being readied for its 6th edition. So began the second of John Merryman's legacies: his contributions to art law, which include groundbreaking articles on the international trade in cultural property, restitution, collecting, counterfeits, art market, artists' rights, resale royalties, public art, museums, and more.

His trailblazing scholarship raised ethical and practical concerns that he also addressed. He helped author California's artists' moral rights legislation, the first of its kind; was an advisor to UNIDROIT and other regulatory bodies; served as an expert in key cases; founded the International Cultural Property Society and its journal; was a mediator in art disputes; and a tireless speaker on the universal importance of art and its interchange as cultural property. A few months ago, at age 95, John taught a new and very popular seminar on stolen art. He was working on the text for that course when he died.

IFAR was fortunate to have John as a long-time contributor. He joined IFAR's Law Advisory Council 30 years ago shortly after it was formed and was an active member until his death. He was a senior advisor to the Art Law & Cultural Property Database, commenting on 195 case law summaries and other material; was a keynote speaker at IFAR's conference on Provenance and Due Diligence; and frequently contributed to this journal's Letters to the Editor as well as in personal communications with its editor-in-chief. His knowledge and guidance were invaluable to IFAR. He will be sorely missed.

My introduction to John was in1986 when I became interested in art law, learned that he was the authority, and read *Law, Ethics and the Visual Arts.* The questions it raised, John's clear and forceful analyses of issues, and his intelligence in approaching them led to my specializing in art and cultural property law. The next year we met at a conference. Ever gracious, and as warm as he was intellectually rigorous, John became mentor, model, friend.

John is beloved. His innovative scholarship, commitment as a teacher, and generosity of spirit are legendary. His beneficence is immeasurable. His loss inestimable. His like will never be seen again.

— DANIEL SHAPIRO
Member, IFAR Law Advisory Counsel

THE CASE AGAINST KAPOOR

"OPERATION HIDDEN IDOL" AND THE UNDOING OF AN ACCUSED ANTIQUITIES SMUGGLER

On April 15, 2015, the Manhattan District Attorney's Office filed a complaint in New York State Supreme Court seeking the forfeiture of 2,622 Asian antiquities seized[1] between 2012 and 2014 from art dealer Subhash Kapoor, estimating their combined value at $107 million.[2] **(FIGS. 1 & 2)** The April complaint arose out of "Operation Hidden Idol," a joint New York State and federal investigation of Kapoor, initiated at the behest of the Indian government.

FIGURE 1. Bronze statue of the goddess Uma Parvati from Tamil Nadu, India. Seized by U.S. authorities in a July 2012 raid on a Kapoor warehouse. (*Vance v. Kapoor,* Exhibit A-6, Item #10).

FIGURE 2. Bronze Idol from India, Chola period (9th–13th Century). Seized by U.S. authorities in a March 2014 raid on a Kapoor warehouse. (*Vance v. Kapoor,* Exhibit A-10, Item #64).

Kapoor's rise to prominence began in 1974 with the opening of his Madison Avenue gallery "Art of the Past." His access to large quantities of high-quality Asian antiquities soon made him one of the pre-eminent dealers in the field, with a client list that included distinguished collectors and museums throughout the world, including The Metropolitan Museum of Art, the Art Institute of Chicago, and the Los Angeles County Museum of Art. It has since been alleged by authorities in both the U.S. and India that Kapoor's access to these antiquities stemmed from his role as the leader of a global antiquities smuggling ring, dealing in objects looted from across South and Southeast Asia.

The evidence of Kapoor's possible involvement in smuggling has led even major museums to re-examine the provenance of any works acquired from him. This will keep them very busy as, over his decades-long career, Kapoor sold or donated hundreds of objects to dozens of museums. In the U.S. alone, 18 museums currently hold more than 500 works acquired from him. Museums began returning Kapoor items to their countries of origin in 2014 (see below); the number of returns has increased in 2015, and shows no signs of slowing down.

> "In the U.S., 18 museums currently hold more than 500 works acquired from Kapoor."

According to authorities, Kapoor's most frequent looting targets were ancient sculptures of "idols" (Hindu deities) from poorly-secured temples and shrines in India, particularly in the Southeastern Indian state of Tamil Nadu. Smuggling such works out of India is a violation of the country's 1972 "Antiquities and Art Treasures Act,"[3] which states that art objects over 100 years old may not be

1 The objects were seized pursuant to criminal charges against Kapoor. Seizure is the taking of property by law enforcement from a person suspected of breaking the law. It provides the government with "possession." In a forfeiture action, the government is seeking actual title to the property.

2 *Vance v. Kapoor* (N.Y. Sup. Ct. *filed* April 13, 2015), p. 3.

3 Antiquities and Art Treasures Act (Act 52 of 1972), G.S.R. 279 (E). Full text of the Act and other Indian cultural property legislation is available on the India Country Summary page of IFAR's Art Law & Cultural Property Database, www.ifar.org.

removed from India without government authorization.

A Lovers' Quarrel

After more than three decades of dealing in allegedly looted antiquities, Kapoor was finally brought down by, of all things, a lovers' quarrel. In 2007, Kapoor's decade-long relationship with Paramspry Punusamy, a Singapore-based antiquities dealer, came to an acrimonious end, with each party suing the other in a Singapore court over possession of certain Indian antiquities. Shortly after their break-up, Punusamy contacted Indian police and presented them with photographs of several looted objects that Kapoor had allegedly smuggled from India to New York. The Indian police began investigating Kapoor and sought U.S. assistance, as the Iranian-born Kapoor was an American citizen and his gallery was located in the U.S.

Timeline

2005-2006: Subhash Kapoor allegedly forms a plan to loot sites in Tamil Nadu, India with Sanjivi Asokan.

2006: 8 statues are stolen from a temple in Sree Puranthan, Tamil Nadu; one is later sold to the National Gallery of Australia and another to Singapore's Asian Civilisations Museum.

2007: Kapoor's former flame provides Indian authorities with information linking Kapoor to looting.

February 2008: 18 statues are stolen from a temple in Suthamalli, Tamil Nadu; at least 14 are shipped to the U.S.

3 suspects arrested in India claim they were hired by Asokan.

March 2009: Asokan arrested in India; implicates Kapoor.

October 2011: Kapoor arrested in Germany and later extradited to India, where he awaits trial.

November 2011-January 2012: Kapoor instructs his sister, girlfriend, and gallery manager Aaron Freedman to hide 4 of the stolen Suthamalli sculptures.

January 2012-2014: U.S. officials initiate "Operation Hidden Idol," raiding Kapoor's facilities and seizing 2,622 antiquities.

2013-2015: Freedman, Kapoor's sister and his girlfriend plead guilty to various charges in the U.S.

2014-2015: National Gallery of Australia returns a looted statue; Singapore's Asian Civilisations Museum promises to return a looted statue.

Both museums file suit against Kapoor and Freedman in New York State Supreme Court.

2015: Several U.S. museums and a private collector return works purchased from Kapoor.

April 2015: New York District Attorney's Office files complaint against Kapoor seeking forfeiture of the 2,622 seized antiquities.

The Next Big Break

In February 2008, thieves broke into the Sri Varadaraja Perumal Temple in the Tamil Nadu village of Suthamalli, making off with 18 bronze idols dating from the Chola period (approximately the 9th to 13th century). Indian authorities arrested three suspects, who confessed that they had been hired to commit the thefts by Sanjivi Asokan, an antiquities dealer based in Chennai (formerly known as Madras), the capital of Tamil Nadu.

The investigation was transferred to the Tamil Nadu Police Department's "Idol Wing," which specializes in antiquities crimes. Investigators learned that Asokan had met with Kapoor in Chennai several times in 2005 and 2006, during which they allegedly formed a "criminal conspiracy" to steal antiquities from unguarded temples throughout Tamil Nadu.

According to the Indian investigators, the 18 looted idols from the Suthamalli temple were delivered to Asokan in Chennai, where at least 14 of them were co-mingled with newly-made handicrafts and put into shipping crates with forged export documents stating that the containers consisted solely of modern

handicrafts. The idols were then exported from Chennai to Hong Kong in March 2008, at which point Kapoor paid Asokan for his assistance and had the idols shipped to the United Kingdom and finally to the U.S. through Nimbus Import Export, Inc., a Kapoor-owned company whose official address was the same as that of the Art of the Past gallery.

"Kapoor was finally brought down by, of all things, a lovers' quarrel."

Officers from the Idol Wing arrested Asokan in March 2009, charging him with theft and smuggling. More than a dozen other people were also arrested for their alleged involvement in the thefts from the Suthamalli temple, as well as a 2006 incident in which 8 bronze idols were stolen from the Sivan Temple in the Tamil Nadu village of Sree Puranthan; they, too, were shipped to the U.S.

"Operation Hidden Idol"

Based on the statements of Asokan and other suspects, in July 2011, the Indian Government obtained a warrant from Interpol for Kapoor's arrest. Pursuant to the warrant, German authorities arrested Kapoor in October 2011 when he entered the country to attend an art fair; he was extradited to India in July 2012 and charged with theft and smuggling.

After Kapoor's arrest in Germany, New York State and U.S. federal authorities launched "Operation Hidden Idol," overseen by Brenton Easter, Senior Special Agent in the Department of Homeland Security's Investigations unit. Between 2012 and 2014, U.S. law enforcement officials conducted a dozen raids of Kapoor's gallery and storage facilities in Manhattan, Queens, and Long Island. After the first raids, which netted millions of dollars worth of allegedly looted antiquities, Manhattan Assistant District Attorney Mathew Bogdanos filed charges against both Kapoor and Aaron Freedman, the manager of Art of the Past since 1995.

Freedman's indictment alleged that, as manager of Art of the Past, he had "arranged for the shipping into and out of the United States of antiquities stolen from numerous countries including ... India, Afghanistan, Pakistan, and Cambodia" and that the works were "shipped through intermediaries ... to help launder [them]." The indictment also accused Freedman of creating "false provenances," "contacting prospective buyers," and ultimately, selling and transporting "looted and thereafter laundered antiquities."[4]

Freedman pleaded guilty in December 2013 to one count of conspiracy to possess stolen property and five counts of possession of stolen property, worth a combined $35 million. As part of his plea agreement, Freedman agreed to provide information against Kapoor.

The U.S. raids also turned up evidence specifically tying Kapoor and other parties in the U.S. to the 2008 thefts from Suthamalli. A January 2012 raid uncovered photographs and forged shipping documents for each of the 14 bronzes stolen from Suthamalli. In addition, officials found notes Kapoor had written to Freedman in November 2011, just after his arrest in Germany, instructing Freedman to move four of these idols: two statues of the god Shiva (worth a combined $8.5 million) and two statues of the goddess Uma (worth a combined $6 million) from the Art of the Past gallery to the home of Selina Mohamad, Kapoor's girlfriend at the time.

But court documents suggest that, after the January 2012 raid, Mohamad no longer wanted the bronzes to remain in her home.

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4 *People of the State of New York v. Freedman*, No. 2013-NY-091098 (N.Y. Sup. Ct. Dec. 4, 2013).

Consequently, Kapoor's sister, Sushma Sareen, arranged for the idols to be moved from Mohamad's home to a "safe location."

For concealing the four looted bronzes, the Manhattan District Attorney's Office charged both Sareen and Mohamad in 2013 with four felony counts of criminal possession of stolen property. Mohamad was also charged with one count of conspiracy. Sareen later pleaded guilty to a misdemeanor count of obstruction of justice, while Mohamad pleaded guilty to a misdemeanor count of conspiracy.

Forfeiture Action

Although Kapoor was indicted in New York in 2012 and is an American citizen, he is unlikely to be extradited to the U.S. until the conclusion of his trial in India, which, as of this writing, has not even begun. Unable to get their hands on Kapoor himself, the Manhattan D.A.'s Office filed the previously mentioned civil forfeiture action in April 2015 seeking the forfeiture of the 2,622 antiquities seized from Kapoor's facilities.

Like the indictment against Freedman, the complaint against Kapoor alleges that, through his gallery, he "illegally obtained antiquities stolen from Afghanistan, India, Pakistan and other nations, illegally imported them into the United States, and illegally sold them to third parties." However, the complaint against Kapoor goes further, by implying that Kapoor played a role in the *actual* looting process, noting that many of the antiquities were "newly discovered and recently removed from the ground, temple, or site where they were found."[5]

The complaint also asserts that, when selling antiquities that he "knew had been stolen," Kapoor "prepared documents falsely representing [their] ownership history" in order to convince "potential buyers that he had legally obtained the items."[6]

Lastly, the complaint alleges that working together, Kapoor and Freedman had "engaged in a common plan and scheme to illegally obtain and sell stolen items of art and conceal or disguise the nature, source, and ownership of the illegally obtained property" and, in so doing, had committed the crimes of "criminal possession of stolen property, conspiracy, and money laundering."[7] The D.A.'s Office argues that the 2,622 antiquities seized from Kapoor's facilities were obtained through this illegal common scheme and, as such, should be forfeited to the government as the "proceeds" of criminal conduct. The complaint further asserts that the objects are subject to forfeiture as "instrumentalities" of criminal conduct that contributed "materially and directly" to Kapoor's alleged crimes.[8]

Returns

As previously stated, the publicity surrounding Kapoor's alleged smuggling operation has forced museums and collectors around the world to reexamine the provenance of works they acquired from him. In 2015, a New York collector voluntarily returned a two-foot tall bronze statue from the 11th or 12th century purchased for approximately $1 million; the Honolulu Museum of Art returned 7 works; and the Peabody Essex Museum in Massachusetts and the Toledo Museum of Art returned one work each. Toledo may soon have to part with many more objects, however, as federal officials have requested that it reexamine an additional 60 works obtained from Kapoor.

Not all museums that have returned objects purchased from Kapoor have done so quietly. Among the most high-profile works sold by Kapoor, also mentioned in Freedman's indictment

5 *Vance v. Kapoor*, p. 3.

6 *Ibid.*, p. 4.

7 *Ibid.*, p. 7

8 *Ibid.*, p. 8.

and Indian court records, were two of the eight 12th-century statues stolen in 2006 from the Sivan Temple in the village of Sree Puranthan. One of them, a statue of the goddess Uma Parameshvari, was sold to Singapore's Asian Civilisations Museum for $650,000 in February 2007 **(FIG. 3)**; the other, a statue of the god Shiva Nataraja, was purchased by the National Gallery of Australia (NGA) for $5 million in October 2007 **(FIG. 4)**.

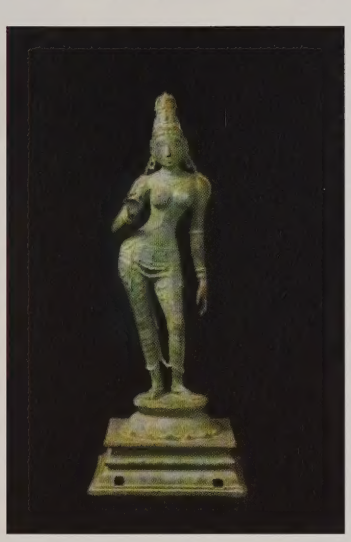

FIGURE 3. Bronze sculpture of the goddess Uma Parameshvari stolen from a temple in Sree Puranthan, Tamil Nadu, India. Purchased from Kapoor by Singapore's Asian Civilisations Museum in 2007. Promised return to India in 2015.

In 2014, the NGA returned the Shiva statue to India, but also filed suit against Kapoor and Freedman in New York State Supreme Court seeking $5 million (the purchase price) alleging that Kapoor and Freedman fraudulently induced the NGA to acquire the Shiva by making misrepresentations and false assurances concerning its history.

Singapore's Asian Civilisations Museum followed the NGA's lead in 2015, promising to return its Uma statue to India, and also bringing suit against Kapoor and Freedman in New York, seeking the repayment of $1.4 million for the Uma statue and two dozen other antiquities it had purchased from Kapoor. Like the NGA, the Singapore museum alleges that Kapoor and Freedman fraudulently induced it to acquire the antiquities by making misrepresentations and false assurances concerning their history and provenance.

FIGURE 4. Bronze sculpture of Shiva Nataraja ("Dancing Shiva") stolen from a temple in Sree Puranthan, Tamil Nadu, India. Purchased from Kapoor by the National Gallery of Australia in 2007. Returned to India in 2014.

It remains to be seen whether other affected museums will follow suit, so to speak, in bringing cases against Kapoor and Freedman.

— **NICHOLAS DIETZ**
Legal Associate, IFAR

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LETTERS TO THE EDITOR

REMINDER

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LAST OF 5 BANCO SANTOS ARTWORKS SEIZED IN U.S. ARE BACK IN BRAZIL

A curtain (but perhaps not the final one) closed on June 18 in a decade-long international money laundering scheme when the United States government returned a Basquiat painting, *Hannibal* **(FIG. 1)**, and a Roman statue to Brazil. The ceremony took place in Manhattan, at the U.S. Attorney's Office in the Southern District of New York.

FIGURE 1. JEAN-MICHEL BASQUIAT. *Hannibal,* **1982. Acrylic, oil stick and paper collage on canvas, mounted on tied wood. Approx. 152 x 152 cm. Returned to Brazil in 2015. © The Estate of Jean-Michel Basquiat/ADAGP, Paris/ARS NY 2015.**

The two works were part of a group of five works seized in 2007 and 2008 after Brazil requested worldwide help in locating the assets of convicted former banker Edemar Cid Ferreira, who had invested millions of embezzled dollars in art that he hid abroad.

The three other seized works — *Modern Painting with Yellow Interweave* by Roy Lichtenstein **(FIG. 2)**, *Figures dans un structure* by Joaquin Torres-Garcia **(FIG. 3)**, and *Compositione abstraite* by Serge Poliakoff **(FIG. 4)** — were repatriated to Brazil in 2010 and 2014. All five were seized on the grounds that they were imported in violation of U.S. Customs laws. A complicated federal forfeiture suit involving all five works, multiple claimants, and a good faith purchaser slowly unfolded over several years, culminating in the June 18th ceremony.[1]

The story began in 2005 when Banco Santos, one of Brazil's largest banks, declared bankruptcy. The following year, Edemar Cid Ferreira, the bank's founder and former president, was convicted by a Brazilian court of money laundering and crimes against the national financial system and sentenced to 21 years in prison. In addition, the judge ordered the confiscation of Ferreira's assets, including hundreds of artworks valued collectively at $20-30 million (U.S.) that had been purchased with the embezzled funds. Several of the most valuable works of art could not be found, and Brazilian authorities asked Interpol and worldwide authorities to help locate them.

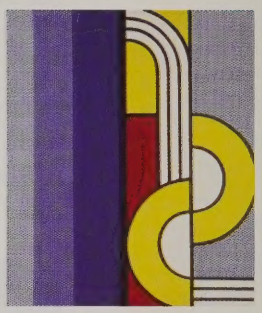

FIGURE 2. ROY LICHTENSTEIN. ***Modern Painting with Yellow Interweave,* 1967. Oil on canvas. 42.2 x 121.9 cm. Returned to Brazil in 2010. ©Estate of Roy Lichtenstein.**

The following year, U.S. authorities learned that Jean-Michel Basquiat's *Hannibal,* one of

[1] See *United States v. The painting known as "Hannibal" by the artist Jean-Michel Basquiat,* No. 08-cv-1511 (S.D.N.Y. filed Feb. 13, 2008), *aff'd in part and remanded in part by* No. 10-5204, slip op. (2d Cir. Feb. 17, 2012), *on remand at* No. 08-cv-1511 (S.D.N.Y.), *aff'd by* No. 10-5204, slip op. (2d Cir. Nov. 3, 2014).

Timeline

2005
Banco Santos in Brazil declares bankruptcy

2006
Edemar Cid Ferreria, Banco Santos' President, sentenced to prison; assets ordered seized

2006
Brazil asks Interpol's help in finding Ferreira's missing artworks

2007
One of Ferreira's artworks, Basquiat's *Hannibal,* is seized in U.S.

Feb. 2008
U.S. Attorney's Office S.D.N.Y. files an *in-rem* suit against *Hannibal*

Late 2008
U.S. authorities discover 3 additional missing paintings and a Roman statue & seek their forfeiture

2009
Several parties assert ownership claims in the five seized works

the missing works, had been imported into the U.S. in August 2007 from London, by way of the Netherlands. The accompanying documents did not specify the artist or title and falsely valued the painting at $100, whereas it had recently been appraised at $8 million. They also failed to name Ferreira or Banco Santos as owners. U.S. Customs and Border Protection (CBP) requires detailed information, including all of the omitted information, to accompany imported commercial goods. On November 7, 2007, U.S. authorities seized *Hannibal* from a Manhattan warehouse.

Preet Bharara, the U.S. Attorney for the Southern District of New York, filed a civil complaint seeking the forfeiture of *Hannibal*. Later, U.S. authorities seized four additional missing works — the paintings by Lichtenstein, Torres-Garcia, and Poliakoff, plus the Roman *togatus* sculpture — from various locations and filed amended complaints seeking their forfeiture as well.

Like the Basquiat, the three other paintings had been imported into the U.S. via the Netherlands, but one year earlier, in 2006. Their customs declarations similarly failed to identify the names of the paintings or the artists and falsely claimed that the paintings were collectively worth only $230, despite a recent appraisal of $4 million. Although the Lichtenstein and the Torres-Garcia had both been sold to a New York purchaser after being imported, both were voluntarily surrendered to U.S. authorities. The Poliakoff had been shipped to Switzerland, where it was seized in July 2008.

The Roman *togatus,* too, was imported into the U.S. from the Netherlands, but in 2007. Its Customs declaration falsely valued it at $100 despite an estimate of approximately $100,000.

Multiple Claimants

The already complicated case became even *more* complicated when several parties claimed ownership interests in the five seized works. In January 2009, a trustee for the Estate of Banco Santos filed a claim to all of the works. A Panamanian company, Broadening-Info Enterprises, claimed an interest in two works — the Roman

FIGURE 3. JOAQUIN TORRES-GARCIA. ***Figures dans un structure* (also known as *Rue*), 1930. Oil on canvas. 20 ½ x16 ½ in. (52 x 42 cm). Returned to Brazil in 2010.**

FIGURE 4. SERGE POLIAKOFF. ***Compositione abstraite,* 1969. Oil on burlap. 162 x 135 cm. Returned to Brazil in 2014. Shown at a ceremony at the U.S. Attorney's Office S.D.N.Y. © 2015 ARS NY/ADAGP, Paris.**

Feb. 2010
Banco Santos settles a claim to the Lichtenstein painting

May & Dec. 2010
District Court says the Basquiat and Roman *togatus* should be forfeited; Appellate Court affirms in part but remands a portion of the case

Sept. 2010
Lichtenstein and Torres-Garcia paintings returned to Brazil

Apr. & Nov. 2014
District Court again says the Basquiat and Roman *togatus* should be forfeited; the Second Circuit affirms

May 2014
Poliakoff painting returned to Brazil

June 2015
Basquiat's *Hannibal* and Roman *togatus* returned to Brazil

"[They] works were part of a group of five works seized … after Brazil requested worldwide help in locating the assets of convicted former banker Edemar Cid Ferreira, who had invested millions of embezzled dollars in art that he hid abroad."

sculpture and the Basquiat. Seth Landsberg, a collector who had purchased the Lichtenstein from the Ace Gallery Los Angeles, filed a claim to that painting. The Ace Gallery and its director *also* filed claims to the Lichtenstein, although ultimately they failed to pursue them. In February 2010, the trustee of Banco Santos paid Landsberg $175,000 to settle his claim — presumably to clear the way for the work to be returned to Brazil, where it would become part of the Banco Santos property to be distributed through bankruptcy proceedings.

FIGURE 5. FERNAND LÉGER. *Les Papillons*, 1937. Oil on canvas. Approx. 130 x 89 cm. (51.2 x 35 in.) Pulled from a Sotheby's auction in 2008. ©2015 ARS NY/ADAGP, Paris.

The Basquiat and the Roman *togatus* were forfeited to the U.S. government by court order on May 18, 2010.[2] Broadening-Info Enterprises appealed that judgment to the United States Court of Appeals for the Second Circuit.[3] In the meantime, the Lichtenstein and Torres-Garcia were returned to Brazil on September 21, 2010, and the Poliakoff, which no one other than Banco Santos had claimed, was forfeited to the United States, which in turn sent it to Brazil on May 9, 2014.[4]

The Second Circuit Court of Appeals affirmed in part the district court's summary judgment order regarding the forfeiture of the Basquiat and Roman sculpture, although it remanded a portion of the case to the district court so it could clarify whether the two works were "stolen, smuggled, or clandestinely imported or introduced" into the United States.[5] According to federal law, that specific wording is the standard for when an illegally imported item is subject to forfeiture.[6]

In April 2013, the district court ruled that the Basquiat and the Roman *togatus* had in fact been "smuggled or clandestinely introduced into the U.S."[7] The court again granted summary judgment to the U.S. and issued an order forfeiting both works to the U.S. The Second Circuit affirmed that judgment in November 2013.[8]

It wasn't until June 18 of *this year*, however, that the Basquiat and the Roman *togatus* — the last of the five works seized in the U.S. — were returned to Brazil. So far, after a seven-year investigation, international authorities have seized approximately 1,000 of Ferreira's works of art in Switzerland, France, the U.K., and the U.S.

But, it appears that there are still *more* works from Ferreira's collection that have not yet been returned to Brazil. IFAR learned that at least one additional painting, Fernand Léger's *Les Papillons* (1937) **(FIG. 5)**, was being held by Sotheby's in London. Ferreira purchased the Léger at Christie's in May 2003, and then sold it through a private dealer in 2007. When the new purchaser consigned it to Sotheby's London in February 2008 (Lot #52), Interpol contacted the auction house to alert it to the Brazilian claim.

For now, at least, the U.S. has taken its final bow in the complicated case of the Brazilian embezzler with a taste for art.

— **ANN-MARGRET GIDLEY**
Legal Associate, IFAR
and **SHARON FLESCHER**
Executive Director, IFAR

• • •

2 *United States v. "Hannibal,"* No. 08-cv-1511, slip op. (S.D.N.Y. May 18, 2010).

3 *United States v "Hannibal,"* No. 10-5204 (2d Cir. filed Dec. 28, 2010).

4 *United States v. "Hannibal,"* No. 08-cv-1511, slip op. (S.D.N.Y. Oct. 15, 2010) (forfeiting the Poliakoff to the U.S.).

5 *United States v. "Hannibal,"* No. 10-5204, slip op. (2d Cir. Feb. 17, 2012).

6 See 19 U.S.C. 1595a(c).

7 *United States v. "Hannibal,"* No. 08-cv-1511, slip op. (S.D.N.Y. Apr. 25, 2013).

8 *United States v. "Hannibal,"* No. 10-5204, slip op. (2d Cir. Nov. 3, 2014).

COURT RULES FOR MADRID MUSEUM IN DISPUTE OVER PISSARRO

In June, a federal district court in California granted the motion for summary judgment of Spain's Thyssen-Bornemisza Foundation in a dispute with the heirs of Lilly Cassirer Neubauer over a Pissarro.[1] Cassirer's heirs maintain that the painting, in the possession of the state-run Foundation since 1993, was taken from Cassirer by the Nazis in a forced sale in 1939. They have appealed the district court's decision to the Ninth Circuit, marking the third time the parties will appear before the Ninth Circuit during their decade-long litigation.

As has been discussed many times in this Journal,[2] the painting at issue, *Rue Saint-Honoré, après-midi, effet de pluie,* was originally purchased by the German-Jewish Cassirer family in 1898. Before fleeing Germany in 1939, Lilly Cassirer sold the work to a Nazi official for a price her heirs contend was well below market value. Her grandson, a California resident (now deceased), learned in 2000 that the painting was located at the Thyssen-Bornemisza in Madrid and requested its return the following year. When the Spanish government refused, he filed suit in 2005 against Spain and the Foundation in the U.S. District Court for the Central District of California.

During the course of the litigation, the Thyssen-Bornemisza Foundation unsuccessfully challenged the jurisdiction of the court, as well as a California law (California Code of Civil Procedure § 338(c)) that extended the statute of limitations for claims seeking the return of stolen works of art. In March 2015, the Foundation lost a motion for summary adjudication,[3] in which it argued that Lilly Cassirer had waived her rights to the Pissarro by reaching a settlement with the German government in 1958, when both sides believed the painting had been lost during the war.

Undeterred, the Foundation filed a motion for summary judgment, arguing that the U.S. district court should apply either Spanish law or Swiss law to the case, as the Foundation was based in Spain and it had received the painting from Baron Hans-Heinrich Thyssen-Bornemisza, a resident of Switzerland. In addition, the Foundation once again challenged the revised California statute of limitation law and also asserted that Cassirer's claims were barred by laches. The court did not reach the latter two issues, however, as it based its June 4 ruling on the choice of law question alone.

> "The court ruled that, based on the adverse possession laws of Spain, the Foundation held legal title to the painting …"

In deciding whether to apply the laws of Spain or California, the federal district court followed the Restatement (Second) of Conflict of Laws, which states that when a party claims title to movable property based on adverse possession, the court must apply the "local law of the state where the chattel was at the time the transfer is claimed to have taken place."[4] Since the Foundation contended that it had acquired title to the painting through adverse possession *in Spain,* the court held that the laws of Spain should apply.

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1 *Cassirer v. Thyssen-Bornemisza Collection Found.*, No. 05-cv-03459-JFW (C.D. Cal. Mar. 13, 2015).

2 See, for example, *IFAR Journal,* Vol. 16, nos. 1 & 2 (2015); Vol. 15, no. 1 (2014); Vol. 13, no. 3 (2012).

3 A motion for summary adjudication seeks dismissal of certain factual issues within the opponent's claim; whereas a motion for summary judgment seeks dismissal of the entire claim.

4 Restatement (Second) of Conflict of Laws § 246 (1971).

Spanish law should also govern the case, according to the court, because Spain had a more "significant relationship" to the painting than did California, whose only relationship was that the plaintiff was a California resident and the work had been sold by a California art gallery in 1951 and again in 1952.

After ruling that Spanish law should govern, the court applied Spain's laws of adverse possession, under which a possessor acquires title to movable property by possessing the property openly and continuously for three years if acting in good faith, or six years if acting in bad faith.[5] Spanish law prohibits only those who actually stole the property, their accomplices, and accessories (people who "covered up" the crime) from obtaining title through adverse possession.

The Foundation met the requirements. It had continuously and publicly displayed the painting from 1993-2001, more than the requisite three or six years. Moreover, the Foundation did not fall into any of the excluded categories, as it had not stolen the painting from Cassirer, had not been an accomplice to the theft, and had not hidden or destroyed evidence about the painting's history. Consequently, the court ruled that the Foundation held legal title to the painting and was entitled to summary judgment.

Despite ruling in its favor, the court admonished the Foundation for taking part in such "prolonged and bitterly contested litigation." Knowing that its ruling would almost certainly be appealed, the court urged the Foundation to reach a settlement "before the next phase of litigation commences in the Ninth Circuit," recommending that it "pause, reflect, and consider whether it would be appropriate to work towards a mutually-agreeable resolution," especially "in light of Spain's… commitment to achieve 'just and fair solutions' for victims of Nazi persecution."[6]

No such agreement was reached and, as the court predicted, the case was once again appealed to the Ninth Circuit. In their June 19 appeal, the Cassirer heirs argued that the court should have applied the laws of California, not Spain, because having a California resident as the plaintiff and sale of the painting by a California art dealer was sufficient to establish the state's connection to the work. The heirs also argued that the Foundation had "concealed and falsified evidence of the provenance" of the painting, which would make them "accessories" to its theft and bar them from acquiring title to the work by adverse possession under Spanish law.

"Despite ruling in its favor, the court admonished the Foundation for taking part in such 'prolonged and bitterly contested litigation'."

In the never-ending point-counterpoint of this case, the Foundation filed an appeal of its own on June 23, seeking rulings on two issues the lower court had not addressed, namely, that the Cassirer heirs' suit was barred by laches, and that, in addition to having title to the work under Spanish law, the Foundation had title under Swiss law, because Baron Thyssen-Bornemisza, who donated the work to the Foundation in 1993, had acquired good title to the painting when he purchased it in Switzerland nearly twenty years earlier.

The "prolonged and bitterly contested litigation" continues.

— N. D.

• • •

5 *Cassirer v. Thyssen-Bornemisza*, (C.D. Cal June 4, 2015), p.11-12.

6 *Ibid.*, p.20.

CONVICTED FRAUDSTER CLAIMS DE KOONINGS ARE FAKE; COURT EXPERTS AGREE

In a he-said she-said legal drama so chock full of unusual events that it almost defies belief, a convicted California real estate developer and art collector now asserts that he is the *victim,* rather than the perpetrator, of fraud in an art deal that went sour.

Luke Brugnara, convicted in May of two counts of wire fraud plus several other crimes for failing to pay $11 million to a dealer for more than two dozen artworks, now alleges that several of the artworks involved are in fact fake.[1]

On September 2, as IFAR was going to press, a California federal court held an evidentiary hearing to assess the fair market value of the works, which include items purportedly by de Kooning, Picasso, Luks, Miró, and a Valsuani bronze cast of Degas' *Little Dancer, Aged 14.* At the hearing, experts on *both* sides agreed that the de Koonings, for which Brugnara was invoiced more than $7 million, were not authentic. While the value of the art was not an element of any of the charged crimes, it will be considered by the court at sentencing, which at press time was scheduled for October. Meanwhile, the federal criminal case has spawned three pending civil suits.

Brugnara was initially arrested and charged with mail fraud in May 2014 for failing to pay Rose Ramey Littlejohn for the works. Littlejohn is a Tennessee resident and New York-based dealer doing business as Rose Long Fine Art.[2] Throughout Brugnara's strange prosecution — in which he partially represented himself, escaped from custody, was held in contempt more than a dozen times, and a juror was removed after an outburst of his own — he repeatedly claimed that the works were fake. Now that the jury has found him guilty of one count each of mail fraud, perjury, escape, and contempt of court in addition to the already-mentioned wire fraud charges, the court has turned to the question of the value of the artworks.

Four works were entered into evidence during the trial — a drawing by Joan Miró, two paintings purportedly by de Kooning, and one by George Luks. They will remain in evidence until the criminal case ends, which could take years with appeals. Now, as a result of the September hearing, *all* the remaining works, apart from the Valsuani bronze which is missing, are being held as well.

> "Now that the jury has found [Brugnara] guilty …, the court has turned to the question of the value of the artworks."

Brugnara's court-appointed attorney raised the authenticity issue earlier this year when she asked the judge not to release the 14 purported de Koonings, which were not included as trial exhibits because her expert doubted their authenticity. As it turns out, *both* prosecution *and* defense experts have now concluded that they are *not* by de Kooning.

Victor Wiener, an appraiser testifying on Brugnara's behalf, took issue with several aspects of the works, including a lack of provenance, stylistic concerns, and signatures inconsistent with known works. In his 133-page appraisal, he criticized both Littlejohn and art dealer Walter Maibaum, on whose behalf Littlejohn/Long offered the paintings and who is separately suing Littlejohn/Long for the disappearance of the *Little Dancer* sculpture. Wiener accused Littlejohn/Long and Maibaum of failing to take steps to verify authenticity and valued the 16 oil paintings on paper, previously

1 See *United States v. Brugnara,* 14-cr-00306-WHA (N.D.Cal. filed May 27, 2014).

2 Some court documents refer to Rose Ramey Littlejohn as Rose Long.

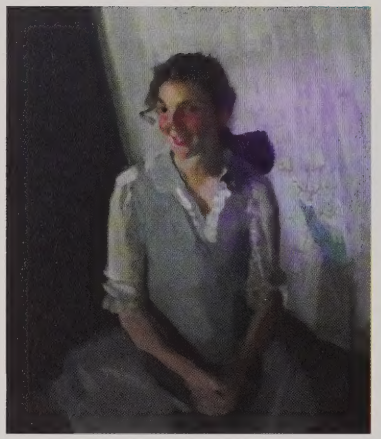

FIGURE 1. GEORGE LUKS, *Untitled Portrait* (presumed to be of Gertrude Vanderbilt Whitney), c. 1908. Oil on canvas, 49 ½" x 39 ½".

attributed to de Kooning, at $80,000. Unexpectedly, the government expert *also* took issue with the alleged de Koonings. Christopher Gaillard, from GurrJohns, assigned "no commercial value" to them. He valued the Picassos and Luks together at $177,000 and did not appraise the Miró drawing or Valsuani bronze. Wiener assigned a fair market value of $600,000 to the missing Valsuani *Little Dancer,* noting that the scholarly community of Degas specialists is dramatically split about whether the Valsuani bronzes are genuine.[3] According to Wiener, the total appraised value for *all of the works at issue* is $895,000. After the September hearing, the court said that no art would be returned until Brugnara's appeals are exhausted and the government affirms that it will not prosecute Maibaum or Littlejohn/Long in connection with these works.

The Alleged Deal

The Brugnara transaction began like any other when Rose Littlejohn/Long contacted him in February 2014 to see if he wanted to purchase a Valsuani Foundry bronze cast of Degas' *Little Dancer,* and a painting by George Luks **(FIG. 1)**. Brugnara agreed to purchase both works for $3,450,000 and asked if any additional works were available. Littlejohn/Long then offered him the 16 purported de Koonings **(FIGS. 2A & B)**. Both the bronze and alleged de Koonings were offered on behalf of Maibaum. Brugnara agreed to purchase the "de Koonings" for an additional $7,325,000.

Next, Littlejohn/Long offered Brugnara a group of Picasso etchings and a Joan Miró drawing **(FIG. 3)** — again on Maibaum's behalf. Brugnara agreed to purchase them as well. The total for all the works, which Brugnara said he was going to place in a planned new museum, came to $11,080,000. When Littlejohn/Long asked Brugnara to provide earnest money as he had done in two previous transactions — one for a Renoir painting and the other a Picasso drawing — he declined. The works were delivered nonetheless, in April 2014, to a San Francisco address provided by Brugnara.

The parties disagree as to the specifics, but according to Littlejohn/Long, Brugnara was to have five days to inspect all the works and either make payment or return anything he did

FIGURES 2A and 2B. Paintings sold as works by WILLEM DE KOONING that experts now say are inauthentic. A (left): *Woman (Study),* 16" x 11". B (right): *Woman (Study),* 18" x 12". Both: c. 1965; Oil on paper.

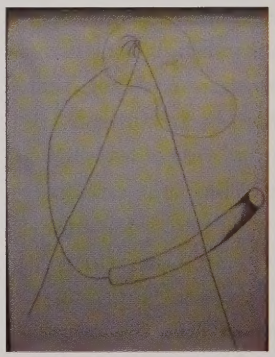

FIGURE 2. JOAN MIRÓ, *Untitled (Personnage),* 1930. Pencil, 24 ¾" x 18". © Successió Miró/ARS NY/ADAGP, Paris 2015.

3 See William D. Cohan, "A Controversy over Degas," *ARTnews,* April 2010 and "Breaking the Silence on Degas," *ARTnews,* May 2010. See also "Two Responses to 'A Controversy over Degas'," *ARTnews,* April 2010; Patricia Failing, "Unraveling the Mysteries of Degas's Sculptures," *ARTnews,* May 2011 and "The Degas Debate: Analyzing the Controversial Plasters," *ARTnews,* June 5, 2013; and Thane Peterson, "Benatov: The Man Behind the Bronzes," *ARTnews,* July 22, 2013.

not want. Littlejohn/Long, who accompanied the artwork from New York, said she was surprised that the address was a residence rather than the museum Brugnara claimed to be building. She was even more surprised when Brugnara — insisting he was too busy — did not open the crates upon their arrival and instead asked the delivery workers to place them in the garage. When Brugnara failed to set a time with Littlejohn/Long in the next few days to open the crates, she claims she went to his residence, peeked into a garage window, and saw that they were no longer there. She then phoned Brugnara, who told her that she would have to deal with his attorney going forward. Brugnara later accused her of fabricating the entire transaction, insisting that she had given him all of the works *as a gift*. Moreover, he asserted that many, if not all, of the works were inauthentic. Brugnara also claimed that he had only received four crates.

The fifth crate, which contained the *Little Dancer*, is still missing.

The FBI arrested Brugnara on May 28, 2014 and seized the four crates, which remained unopened. After the jury found Brugnara guilty on May 15, 2015 of two counts of wire fraud, plus one count each of mail fraud, perjury, escape, and contempt of court, the court ruled that he had forfeited his right to represent himself at sentencing due to his outrageous behavior in the courtroom during the trial.

Loose Ends

Even though Brugnara has been convicted and experts agree that the purported de Koonings are fake, several other issues remain unresolved. On May 19, the court ordered Brugnara to promptly and unconditionally return the bronze *Little Dancer* to Littlejohn/Long. Meanwhile, Maibaum sued her over the missing bronze in a separate lawsuit, in which Littlejohn/Long has filed counterclaims.[4]

Maibaum filed an insurance claim for the sculpture, but Lloyd's of London, which insured the bronze for $1.5 million, will not pay out on the policy. In yet another lawsuit stemming from the events, Lloyd's said the claim is excluded as a "mysterious disappearance or unexplained loss" because it "results from theft or dishonesty by a person to whom the insured property was entrusted."

Brugnara faces close to 14 years in prison for the May convictions and, as noted, is scheduled to be sentenced in October. In the meantime, he has requested a new trial for, among other reasons, the court's failure to spontaneously terminate his self-representation during the trial!!!

— A.M.G. and **S.F.**

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4 *The Degas Sculpture Project Ltd. v. Littlejohn*, No. 14-cv-04304 (S.D.N.Y. filed June 13, 2014)

U.S. COURT REJECTS POLAND'S EXTRADITION REQUEST FOR ART DEALER WITH NAZI-LOOTED WORK

On August 3, a federal judge in New York rejected a request from Poland to extradite a Russian art dealer accused of knowingly acquiring a Nazi-looted work.[1] The work, an 18th century painting by Antoine Pesne **(FIG. 1)**, was looted from the Wielkopolskie Museum in Poznaniu, Poland during WWII and later taken to the Soviet Union by a Soviet soldier as a spoil of war. Poland accused Alexander Khochinsky, a Russian citizen currently in New York, of unlawfully acquiring the work, which he inherited in 1991. The judge denied the extradition request because, he said, there was no evidence that Khochinsky *knew* the painting was stolen *when he acquired it.*

In a 19-page Opinion that reads like a novel, Judge Jed Rakoff of the Southern District of New York — no stranger to WWII restitution cases — first sifted through decades of facts to determine which ones were relevant to the crimes that Poland accused Khochinsky of committing. Although the complete trajectory of the painting, *Girl with Dove,* is not known, its acquisition by the Polish museum in 1931 and that it was taken by the Nazis *is* known. And although some of the works removed from the museum were later recovered, *Girl with Dove*'s location remained unknown.

At the extradition hearing on June 17, 2015, Khochinsky and his relatives testified that he had inherited the painting from his father in 1991. Khochinsky's father, a Soviet soldier, claimed that as the war came to a close, the Soviets found the painting in a house occupied by German soldiers and took it to Russia. Khochinsky openly exhibited *Girl with Dove* in his Moscow gallery, Bohema, from approximately 2003-2010 and also advertised it in gallery catalogues. It wasn't until March 2010, when Khochinsky met an unidentified person who works in the art loss field at an exhibition in the Netherlands, that he learned that Poland sought the painting.[2] In a self-described effort to exploit Poland's interest, Khochinsky contacted Polish authorities two months later, on May 18, proposing to return the painting in exchange for financial compensation for the loss of property in Poland that had once belonged to his mother, a Polish Jew who fled during the war. A Roman Catholic church now stands on the property.

After initially stating that it would negotiate with him and then verifying in Moscow that his painting was the work that had been removed from the museum, Poland asked Khochinsky to provide information on his acquisition of the painting and proof of ownership. On February 28, 2011, the Polish Ministry of Culture sent Khochinsky a formal restitution request demanding the return of the painting, which it considers stolen property. In its view, "compensatory restitution" could not apply to cultural assets of occupied states that were plundered

FIGURE 1. ANTOINE PESNE. *Girl with Dove,* 1754. Oil on canvas 55 x 46 cm. Removed from Poland by Nazis and later seized by the Red Army.

1 See *In the Matter of the Extradition of Alexander Khochinksy,* No. 15-mj-847-JSR, slip op. (S.D.N.Y. Aug. 3, 2015).

2 Although initial reports said that Khochinsky first learned that Poland sought the return of the painting at a lunch in Paris, Khochinsky testified that he learned it at a gallery in The Netherlands. See Opinion, Page 10.

by the Nazis. Unbeknownst to Khochinsky, Poland had listed *Girl with Dove* on Interpol's Stolen Works of Art database on November 9, 2010 — several months *after* his initial contact with Polish authorities.

When Khochinsky refused to comply, Poland sought international legal assistance. Russia refused to search Khochinsky's private home but did agree to search his gallery. The painting had been removed from the gallery, however, after the Polish expert examined it. Poland then issued a provisional warrant for Khochinksy's arrest for violation of Poland's criminal code by knowingly obtaining an object acquired through a prohibited act. A Polish judge determined that there was a "high likelihood" that Khochinsky unlawfully acquired the painting and was willfully concealing it to avoid returning it to the rightful owner. Khochinsky was then formally charged with violating the Polish Criminal Code.

But Khochinsky was in the U.S., so Poland approached the United States government, which petitioned the court for an extradition order on Poland's behalf, in accordance with the U.S.-Poland Extradition Treaty. Khochinsky moved to dismiss the Extradition Complaint, arguing that the Soviet acquisition of *Girl with Dove* constituted a valid Act of State and/or that he acquired good title to the painting pursuant to the Russian law of adverse possession. After oral argument, however, Judge Rakoff deferred ruling on that motion due to unresolved factual issues and scheduled an extradition hearing instead.

In addition to Khochinsky and his relatives, two experts testified at the June extradition hearing about the history of post-War Europe, Soviet attitudes towards trophy art, and the law of reparations and restitution.

In his August 3 Opinion and Order following the hearing, Judge Rakoff ruled that the Polish charge against Khochinsky was limited to his acquisition of the painting *before* May 18, 2010, when Khochinsky initially contacted Polish authorities. Although the U.S. government (on behalf of Poland) argued that Khochinsky's efforts to sell the painting to Poland and his concealment of it were also relevant to the charged crime, Judge Rakoff's close reading of the warrant limited its scope to exclude Khochinsky's post-May 18, 2010 conduct. Accordingly, the only issue before the federal court in New York was whether the government had presented probable cause to believe that Khochinsky had acquired the painting before May 18, 2010 *knowing* that it was stolen property.

"The only issue before the federal court in New York was whether the government had presented probable cause to believe that Khochinsky had acquired the painting before May 18, 2010 *knowing* that it was stolen property."

Turning to evaluate whether the government had presented sufficient evidence of the charged crime, Judge Rakoff noted that the Federal Rules of Evidence and the Federal Rules of Criminal Procedure do not apply during extradition proceedings. Moreover, all the evidence is presented by the prosecution, and the defendant has no right to cross-examine witnesses or to introduce evidence to rebut that of the prosecutor. The court's job is solely to conduct an independent assessment of the evidence and determine whether probable cause has been presented.

Limiting the scope of the charge to Khochinsky's pre-May 18, 2010 behavior, Judge Rakoff concluded that there was not probable cause that Khochinsky violated the Polish Criminal Code. To the contrary, he said, the only evidence in the record tended to corroborate Kochinsky's claim that he inherited the painting from his father and only learned that Poland was seeking it in 2010 — long after he acquired it. Extradition request denied.

— A.M.G.

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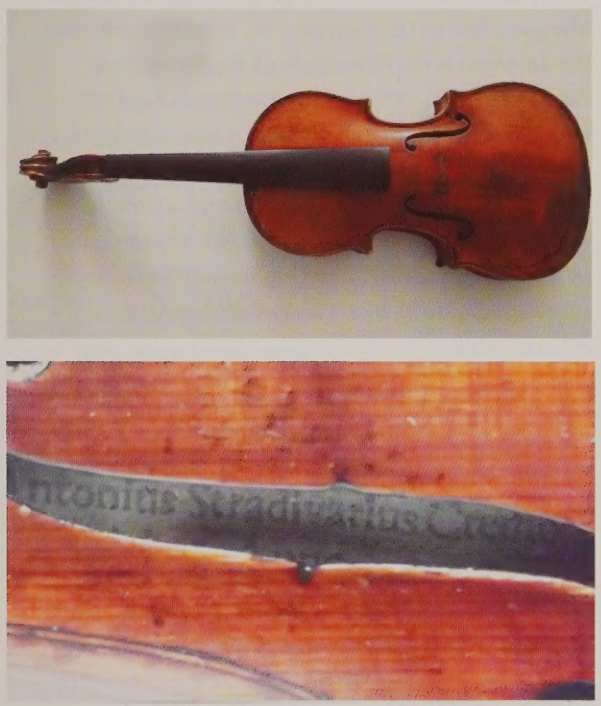

FIGURES 1A and **B.** ***Ames* Stradivari Violin.** Stolen in 1980; recovered in June 2015 and returned to the heirs of Roman Totenberg. **A (top):** The violin. **B (bottom):** The Stradivari inscription.

On June 26, 2015, the 1734 *Ames* Antonio Stradivari violin **(FIG. 1A&B),** stolen 35 years ago from violinist Roman Totenberg, was taken into FBI custody. Several weeks later, on August 6, the instrument was returned to Totenberg's three daughters and heirs at a celebratory ceremony at the U.S. Attorney's Office in Manhattan. Because of the value and rarity of the instrument and the name recognition of Totenberg's daughter Nina, a prominent journalist, the news coverage was focused on the remarkable recovery. Less publicized was how this violin was identified and how many other notable violins have been stolen over the years, many of which are still missing.

> "Less publicized was how [the *Ames-Totenberg*] violin was identified and how many other notable violins have been stolen over the years, many of which are still missing."

The *Ames-Totenberg* violin had vanished in May 1980 after a concert by Roman Totenberg at Bard's Longy School of Music, in Cambridge, Massachusetts, where Totenberg was the director. Phillip Johnson, an aspiring musician who died in 2011, reportedly snatched it.

* Carla Shapreau, an attorney and violin maker, is a Lecturer and Senior Fellow at the University of California, Berkeley. She is also the co-author of *Violin Fraud: Deception, Forgery, Theft, and Lawsuits in England and America,* Oxford University Press and writes frequently about art and cultural property issues.

1 Stradivari is the actual last name of the great Italian violin maker, Antonio Stradivari (1644-1737). He Latinized his name on the printed labels inserted inside his violins, as did most of his Italian violin-making contemporaries. The Latinized name, Stradivarius, is frequently used instead of the Italian, Stradivari. Either is correct.

Johnson left the violin with his ex-wife, Thanh Tran. After Johnson's death, in an effort to appraise the violin, Tran contacted Pittsburg violin expert Philip Injeian, initially sending him photographs. Injeian later said:[2] "They took a photo of the label dated 1734. How many German copies are there with that date? That was a red flag. The maple back is slab cut, with large rings on the back and a mineral stain on the right bottom side." Injeian made a visual match between the suspect instrument and the authentic *Ames* Stradivari by referring to Herbert Goodkind's *Violin Iconography of Antonio Stradivari.* He next analyzed the violin's provenance and discovered that it was stolen property by referring to a publicly accessible online violin-world database known as the Cozio Archive.[3]

"Like artwork, no two rare violins are the same. An array of variations in both materials and workmanship distinguish one from the other ..."

Injeian arranged to meet Tran for a physical examination of the violin in a Manhattan hotel on June 26. Once Injeian confirmed his suspicions, he contacted law enforcement and Tran voluntarily relinquished the violin into the custody of the FBI, stating that she had no knowledge that the violin had been stolen. The Money Laundering and Asset Forfeiture Unit of the U.S. Attorney's Office handled the recovery proceeding. Under a Stipulation and Order between the U.S. Attorney and Tran, the violin was quickly returned to its rightful owners, Roman Totenberg's three daughters.[4]

In its August 6 press release, the U.S. Department of Justice said of the recovery, "Thanks to the violin appraiser's good citizenship and law enforcement's prompt response, today we celebrate the Totenberg family's reunion with a priceless family heirloom, thought for decades to have been lost forever – a joyful ending to an amazing story."[5] Unfortunately, Totenberg, born in Poland and a 1938 U.S. émigré who had a long and distinguished career as a teacher and performer, died in 2012, before that joyful reunion.

VIOLIN THEFTS

Rare instruments of the violin family, easily concealed and highly portable, have often been targeted for theft, and when they go missing they all too often are lost to their owners for many years. Since the emergence of the violin in a highly refined state in the mid-16th century, instruments of the violin family, particularly those made in Italy from the 16th to the 18th century, have been highly prized. Treasured for their sound and aesthetic beauty, instruments made by master luthiers, such as Antonio Stradivari and Guaneri del Gesù, are considered objects of art and often have stratospheric values.[6]

Like artwork, no two rare violins are the same. An array of variations in both materials and workmanship distinguish one from the other, and include a maker's personal style, idiosyncrasies, tool marks, techniques of construction, wood selection, varnish characteristics, as well as design and other aesthetic facets of the instrument. While historical labels with the maker's name, year and city of construction are regularly and prominently affixed with hide glue to the inside of instruments of the violin family, original labels have in many instances been substituted out by those intending to deceive, whether to enhance a sales price, or for

2 Phone conversation with the author on August 12, 2015.

3 Cozio Archive, Stolen Instrument Register: http://tarisio.com/cozioarchive/stolen-instrument-register/.

4 Stipulation and Order, *The Violin Known and Described as the "Ames Stradivarius," Constructed in or about 1734 by Antonio Stradivari* (S.D.N.Y. August 5, 2015).

5 http://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-and-fbi-announce-return-stolen-stradivarius-violin-heirs-musician.

6 Kathryn Graddy and Philip E. Margolis, "Fiddling with Value: Violins as an investment?" *Economic Inquiry,* Vol. 49, No. 4 (2011), 1083-97. The world auction record for a violin is $15.9 million for the 1721 "Lady Blunt" Stradivari in 2011. "Lady Blunt Stradivari of 1721," Tarisio Fine Instruments and Bows, http://tarisio.com/auctions/notable-sales/lady-blunt-stradivarius-of-1721/. In 2012, the Vieuxtemps Guarneri del Gesù violin, circa 1741, sold in a private sale for in excess of $16 million. E.H.B., "A High Strung Market, *The Economist,* 2 Dec. 2013.

other reasons.[7] When Injeian examined the *Ames* Stradivari he considered many of these details.

The *Ames* Stradivari, like many other rare historical instruments of the violin family, is named after its prior owner, 19th century violinist George Ames. Several other stolen Stradivari violins remain missing today. Among them are the:

- 1709 *Mendelssohn*
- 1709 *King Maximillian-Unico*
- circa 1709 *Warde*
- 1712 *Karpilowsky-Benjamin*
- 1714 *Le Marien*
- 1716 *Colossus*
- 1719 *Lauterbach-Grohmann*
- 1727 *Davidoff-Morini;* and
- 1735 *Lamoureux-Zimbalist.*

Many other missing Stradivari have been recovered. Among them are the:

- 1671 *Oistrakh*
- 1684 *General Kyd* cello
- 1694 *Muir-MacKenzie*
- 1696 *Ex-Kym*
- 1713 *Gibson-Huberman*
- 1715 *Lipinski*
- 1717 *Kochanski*
- 1721 *Sinsheimer-Iselin,* a circa 1727 violin that belongs to the Dallas Symphony
- 1732 *Duke of Alcantara*[8] **(FIG. 2A & B);** and
- 1734 *Ames-Totenberg.*

Although some people have argued that publicizing a theft (whether of a violin or painting) may drive the stolen object underground, it appears that there is greater wisdom in immediately and widely reporting such a theft, which has on many occasions contributed to a recovery.

Each of these violins has its own, often remarkable history. The 1715 *Lipinski* Stradivari violin was stolen on January 27, 2014 in an unprecedented stun gun attack on Milwaukee Symphony Orchestra concertmaster Frank Almond, when he exited the back door of the concert hall after an evening concert at the Wisconsin Lutheran College. The heist was initially believed to be the work of sophisticated art thieves, but later turned out to be the plan of two small-time crooks. The stun gun, when shot, released specially coded confetti, later found by police at the scene of the crime. This evidence enabled law enforcement agents to identify the registered purchaser of the weapon, a Milwaukee

FIGURES 2A and **B. *Duke of Alcantara* Stradivari Violin.** Stolen in 1967; recovered in December 1995 and returned to the University of California. **A:** Close-up photo of the violin. **B:** Detail of the scroll.

FIGURE 3. *Lipinski* Stradivari. Stolen in January 2014 in a stun-gun attack on the Milwaukee Symphony Orchestra concertmaster. Recovered within weeks. Ph. FBI press release.

[7] People who collect violins have at times also collected their labels to build a collection, by removing the original labels and substituting others. More commonly, labels were substituted to fetch a higher price. Antonion Stradivari, for example, had two sons, Omobono and Franceso, also violin makers. They had their own labels, but there aren't many of their labels inside their violins today. The presumption is that unscrupulous dealers deceptively replaced them with so-called Antonio Stradivari labels.

[8] See, Carla Shapreau, "Missing Stradivari Recovered by the University of California," *IFARreports*, Vol. 17, no. 3, March 1996.

FIGURE 4. ***Gibson-Huberman*** **Stradivari Violin,** Stolen in 1936 from Bronislaw Huberman's dressing room in Carnegie Hall. Recovered in 1985. This violin is now played by Joshua Bell. Ph: **(top)** courtesy of Sony Classical; **(bottom)** Lisa Marie Mazzucco.

barber named Universal Knowledge Allah, one of the thieves. Hours after the violin was stolen, the Milwaukee Police found the violin's case discarded by the side of the road. Fortunately, forensic evidence, a news blast, a $100,000 reward, a useful tip, and excellent law enforcement efforts resulted in the arrest of the two thieves one week after the robbery. A few days later, a SWAT team recovered the violin hidden in an attic, wrapped in a baby blanket inside a suitcase and in good condition **(FIG. 3).**[9]

In contrast, the 1713 *Gibson* Stradivari **(FIG. 4)**, now played by violin virtuoso Joshua Bell, was stolen twice in the 20th century. It was first stolen from its owner, Polish violin soloist Bronislaw Huberman, in 1916 from a Viennese hotel, with a quick return a few days later. It was stolen again in 1936, after which the violin went missing for half a century before surfacing. A young violinist named Julian Altman allegedly purloined it from Huberman's dressing room at Carnegie Hall on February 28, 1936, during a recital in which Huberman played on his other violin, made by Guarneri del Gesù.[10]

The *Gibson* Stradivari's whereabouts came to light in 1985 when Altman was on his deathbed and told his wife, Marcelle Hall, that his violin was the stolen *Gibson* Strad.

Altman was incarcerated at the time for sexually abusing Hall's grandchild; he also had been diagnosed with stomach cancer. Altman told Hall to get his violin and look beneath the canvas case cover, which concealed news reports of the violin's theft half a century earlier. After Altman died, Hall negotiated with Lloyd's of London for return of the Strad for a $263,475.75 finder's fee. How Altman came to possess the violin is uncertain, however, because Hall provided two different explanations about the theft. The first was that immediately after the theft, Altman bought the violin for $100 from the thief. But when a legal fight broke out between Hall and Altman's daughter in the 1990s over the hefty Lloyd's of London finder's fee paid to Hall, Hall testified in a 1995 legal proceeding that Altman and his mother had conspired to steal the violin from Huberman. Altman, known by the Carnegie Hall guard because he played in a youth orchestra there, offered the guard a Havana cigar and told the guard that he would watch the door while the guard went for a smoke. Altman then pinched the *Gibson* Strad from Huberman's dressing room, slipped it under his coat, left the hall, and grabbed a cab to his apartment, where his mother was waiting. Altman then played the violin for nearly five decades. Where the truth lies, we may never know.

While theft cases involving art and Stradivari violins often raise complex legal issues, in the case of the *Ames* Stradivari, the violin's possessor, Thanh Tran, voluntarily relinquished the violin to the Totenberg heirs, which greatly simplified the legal proceedings and streamlined the recovery. The ability of the expert — Injeian — to authenticate the object and to confirm its provenance as stolen was essential to the recovery. The availability of a publicly accessible theft database in the microcosm of the violin world was a significant link in the process, raising the importance of due diligence by theft victims and others in the stream of commerce.

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9 FBI Press Release, January 23, 2015, https://www.fbi.gov/news/stories/2015/january/the-case-of-the-stolen-stradivarius/the-case-of-the-stolen-stradivarius.

10 See, Carla Shapreau, "Did He or Didn't He?," *The Strad,* January 1998, http://www.thestrad.com/strad/wp-content/uploads/2013/11/Huberman-Strad-Article-Shapreau-300dpi.pdf.

A CASE OF MISTAKEN IDENTITY: IFAR INVESTIGATES A "JACKSON" POLLOCK AND UNCOVERS HIS BROTHER CHARLES

LISA DUFFY-ZEBALLOS AND SHARON FLESCHER*

As the subject of a long-overdue retrospective at the Peggy Guggenheim Collection in Venice,[1] Charles Pollock is finally having his day. The 2015 exhibition features many previously unknown works showcasing the diverse output of Jackson's older brother, along with a selection of letters and other documents from the Pollock family archives. It is an appropriate moment, therefore, to discuss yet another previously unknown painting by Charles Pollock—not in the exhibition—that awhile back was submitted to IFAR's Authentication Research Service as a possible early work by his more famous brother. IFAR's investigation not only uncovered an authentic work to add to the artist's oeuvre, it also shed light on Charles Pollock's—and Jackson's—activities during the Great Depression.

Several years ago, IFAR was contacted by an owner who claimed to have a previously unknown early painting by Jackson Pollock. The painting depicted a bleak prairie farm after a drought **(FIGS. 1 & 2),** very much in the American Regionalist style of Thomas Hart Benton, Jackson's first teacher. In fact, the picture's style and subject matter recalled several of Jackson Pollock's "Bentonesque" paintings of the 1930s, including *Landscape with White Horse* and *Going West* **(FIG. 3),** both from around 1935.[2] This similarity, the high quality of the work and a signature that the owner read as "J. Pollock," understandably led the owner to suspect that the painting was a previously unknown work by Jackson Pollock.

Jackson, however, was not the only Pollock brother to work with Benton. Charles, older than Jackson by 10 years and the oldest of the five Pollock boys, had become enamored with Benton's Social Realist style early on, and studied with him from 1926-1927 at the Art Students League in New York. Despite that limited time, Benton's influence had a lasting impact on him, as it did on Jackson.

FIGURE 1. CHARLES POLLOCK, ***House and Plow in Dust Area,*** 1935-1937. Oil on canvas mounted on board. 21 ¼ x 29 ¼ in. (54 x 74 cm). Private Collection.

FIGURE 2. Detail of the signature "C. Pollock."

In their paintings of the early 1930s, both Jackson and Charles Pollock demonstrate their interest in the types of rural and industrial scenes depicted by Benton, but presented in a far starker light. The brothers' impressions of America were strongly influenced by their Depression-era experience driving from New York to California to visit their recently widowed mother during the summer

FIGURE 3. JACKSON POLLOCK, ***Going West,*** 1934-1935. Oil on fiberboard. 15 ⅛ x 20 ¾ in. (38.3 x 52.7 cm). National Museum of American Art, Washington, D.C. © 2015 The Pollock-Krasner Foundation/ ARS NY.

* Lisa Duffy-Zeballos, Ph.D., is the Art Research Director of IFAR and Sharon Flescher, Ph.D., is Executive Director of IFAR and Editor-in-Chief of the *IFAR Journal.* We wish to acknowledge the additional research of Gertrude Wilmers, Ph.D, former Special Research Associate at IFAR.

1 *Charles Pollock: A Retrospective,* Peggy Guggenheim Collection (April 23-Sept. 14, 2015).

2 See also, Francis V. O'Connor and Eugene V. Thaw, *Jackson Pollock, A Catalogue Raisonné of Paintings, Drawings, and Other Works* (New Haven and London: Yale University Press, 1978), vol. 1, no. 16.

of 1934. Crossing through the south central United States, they witnessed first hand the desolation created by years of drought, wind and soil erosion. Texas was especially hard hit: earlier that spring a huge dust storm swept across the state, driving thousands of people from their ruined farms. As Charles later recalled of that trip, "This was the year of the great Okie migration and the drought. We saw it all."[3]

The IFAR painting, depicting the fallow land of a deserted prairie farm, evokes the kind of scenes the Pollock brothers might have seen on their journey through the beleaguered South. The sole vegetation — a clump of grass and a small tree — is withered, a large plough in the foreground lies idle, and the only sign of life is a grazing horse. Dust clouds in the distance herald an oncoming windstorm that threatens to further devastate the landscape, and the painting's reddish tonality underscores the desolation of the scorched earth.

"Our preliminary examination of the signature suggested that what the owner assumed was "J" Pollock was actually a 'C'."

The owner had received the painting in 1952 as a gift from his friend, Clay Cochran (1915-1982), a labor union organizer and housing reformer, who had founded the Rural Housing Alliance in the 1960s. In the late 1930s, Cochran had worked for the Resettlement Administration (RA), a New Deal program established in 1935 to help farmers move from blighted areas onto more productive lands. The Resettlement Administration was taken over in 1937 by the Farm Security Administration (FSA), which relocated sharecroppers and migrant farm families to government-planned agrarian labor camps largely in the Southwest. From about 1939 to approximately 1941, Cochran served as the first director of the FSA labor camp in Weslaco, Texas

FIGURE 4. Photo of Weslaco Migrant Labor Camp, c. 1939. Ph. Lee Russell, Courtesy Library of Congress.

(FIG. 4) near the Mexican border.[4] The IFAR painting hung in Cochran's office in the labor camp, and Cochran is said to have taken the work with him when he left Weslaco, possibly around the time that the camp itself was closed.

AUTHORSHIP—CHARLES VS. JACKSON

Soon after the painting was sent to IFAR, we began to suspect that we were dealing with a case of mistaken identity. Our preliminary examination of the signature suggested that what the owner assumed was "J" Pollock was actually a "C" **(FIG. 2).** The specialists who examined the painting agreed, noting that the skilled paint handling, draftsmanship and perspective were more consistent with Charles, who, being older and more experienced than Jackson, was the more technically accomplished artist at that time.

The painting's connection to the Resettlement Administration made it even more likely that the IFAR painting was the work of Charles, and not Jackson, Pollock. In September 1935, shortly after his cross-country road trip, Charles moved to Washington, D.C., to work for the Special Skills Division of the Resettlement Administration. The Special Skills program employed artists to supervise community art projects and to create artwork for RA publications and government offices. Together with the artist Ben Shahn, Charles Pollock made

[3] Quoted in Steven Naifeh and Gregory White Smith, *Jackson Pollock: An American Saga* (New York: C.N. Potter, 1989), p. 259.

[4] *Migrant and Seasonal Farmworker Powerlessness: Hearings before the Subcommittee on Migratory Labor of the Committee on Labor and Public Welfare, United States Senate* (July 21, 1970), p. 5, 521.

several trips to the Midwest and Deep South to supervise mural and other arts projects in those communities.

FIGURE 5. CHARLES POLLOCK, ***After the Drought,*** 1935. Lithograph. 9 ¼ x 12 in. (23.5 x 30.5 cm). © Charles Pollock Archives.

Perhaps Charles Pollock's most significant legacy from his time in the RA was a series of illustrations for sheets of folk songs put together for the Resettlement Administration by the musicologist Charles Seeger (father of the folk singer Pete Seeger). With these images, Pollock attempted to provide accurate unsentimentalized scenes of rural life as a way to bear honest witness to their experience.[5] One of these songsheets, *The Farmer,* from 1936,[6] exhibits the identical plow found in the IFAR work, and a lithograph titled *After the Drought,* from 1935 **(FIG. 5)** depicts a similarly devastated landscape devoid of human presence. A large animal skull, a symbol of the ravages of the drought, is placed in the foreground, as is the unused plow in the IFAR painting, and the arid, empty land here, too, is dotted with dead or dying vegetation.

Charles eventually became disillusioned with the Resettlement Administration and discouraged at his inability to make a meaningful contribution to the plight of the rural poor. By 1937, when the Resettlement Administration was subsumed into the Farm Security Administration, the task of documenting the Great Depression increasingly fell, not to the artists of the Special Skills Division, but to photographers such as Dorothea Lange, Walker Evans and Russell Lee. As Charles himself ruefully observed, although "there was a time in the nineteenth century when a graphic artist could make important statements about social conditions," such statements had become "irrelevant in the face of photography."[7]

Charles moved to Detroit, where he worked as a layout editor and political cartoonist for the United Automobile Workers. Although his focus shifted to the cause of urban workers, scenes of rural despair continued to haunt his paintings. Few of Charles Pollock's paintings from the Resettlement Administration are known today, although some of his later Depression-era paintings are housed in the Smithsonian American Art Museum in Washington, D.C., donated by his first wife, Elizabeth. This collection of paintings, drawings, and lithographs provides insight into the influence the Depression had on his subject matter, which Elizabeth Pollock described as "bone-worn workers, exhausted miners, burdened women, dying landscapes, industrial ruins, etc."[8] One of these, the 1942 painting *Look Down that Road* **(FIG. 6.),** depicts a despondent black sharecropper sitting on his suitcase awaiting transport away from a failing farm. The barn in the distance is of the same construction as the one which figures prominently in the IFAR painting. As in the IFAR work, the swirling brushstrokes give the ground an unstable sense of motion, while the acid, unnaturalistic colors lend a hallucinatory character to the scene.

FIGURE 6. CHARLES POLLOCK, ***Look Down that Road,*** ca. 1942. Oil on canvas mounted on fiberboard. 38 x 48 in. (96.4 x 122 cm). Smithsonian American Art Museum, Washington, D.C.

5 *Charles Pollock: A Retrospective,* Peggy Guggenheim Collection (Venice: Marsilio Editore, 2015), pp. 74-75.

6 Terence Maloon, *The Art of Charles Pollock: Sweet Reason* (Muncie: Ball State University Museum of Art, 2002), p. 185.

7 *Ibid.* p. 186.

8 Letter to Garnett McCoy, December 8, 1987, quoted in Maloon, p. 182.

FIGURE 7. CHARLES POLLOCK, ***Man at the Well,*** ca. 1937-1942. Tempera on board. 15 x 16 in. (38.1 x 40.6 cm). Collection of Samantha McCoy, courtesy of Jason McCoy Gallery.

Similarly, the folksy quality seen in Charles' *Man at the Well* **(FIG. 7)** from c. 1937-42 is evident in the arrangement of the landscape elements in the IFAR painting, which gives the work the flavor of a staged diorama.[9] The IFAR painting's style and execution, however, demonstrate the artist's sophisticated handling of perspective, wherein the flat planes of the storm cellar door and the roof of the barn intensify the sense of desolation and abandonment.

IFAR's belief that the painting under review was by Charles rather than Jackson Pollock was confirmed when we removed the paper backing on the verso and discovered a label from the Special Skills Division of the Resettlement Administration **(FIG. 8).** It read:

PROPERTY
SPECIAL SKILLS DIVISION
RESETTLEMENT ADMINISTRATION
NO. 7 SERIES Dust.
TITLE House and Plow in Dust Area.
ARTIST Chas. Pollock
U.S. Government Printing Office
16-5140

FIGURE 8. Resettlement Administration label on the back of ***House and Plow in Dust Area.***

[9] As Maloon has written, the faux naïf quality of Charles Pollock's works was reinforced by his habit of making clay setups as compositional aids, pp. 183-84.

The label revealed the painting's true title, and that it was number 7 in a series called "Dust". The label also enabled us to more securely date the painting to 1935-1937, the years that Charles Pollock was working for the Resettlement Administration. Reference specialists at neither the Library of Congress nor the National Archives and Records Administration (NARA) were able to enlighten us as to what other artists or paintings were involved in the "Dust" series.

Charles Pollock's widow, Sylvia, came to IFAR's office and provided further confirmation of the attribution, producing an old black and white photograph of the IFAR painting, inscribed in pencil on the back with the number RA-15345-B, which presumably corresponds to the painting's registration number in the Resettlement Administration. The photograph bears trace marks, spurring Mrs. Pollock to suggest that the work may have been copied, perhaps with the idea of making a print from it, but no such work is known to exist. After examining the work, Sylvia reconfirmed that it was by her late husband, and that the signature lower right was also his.

"The painting originally belonged to the Resettlement Administration, and later the Farm Security Administration, and may still be considered the property of the U.S. government."

IFAR was naturally delighted to reattribute this early painting to this deserving artist, who lived in the shadow of his younger brother, but our good news to the owner came with a word of caution. As the label on the back makes clear, the painting originally belonged to the Resettlement Administration, and later the Farm Security Administration, and it may still be considered the property of the U.S. government. Although Clay Cochran may have believed that the IFAR painting had been abandoned when the Weslaco Labor Camp closed, and that he was free to take it, in fact, the federal government insists that works it commissioned

and owned under the various Depression-era projects cannot be abandoned, and that title cannot be relinquished through "negligence, delay, or unauthorized actions by subordinate officials." [10]

In recent years, the federal government has reasserted its ownership of the artworks created under the Works Progress Administration (WPA), and current and future possessors of artworks produced as part of the New Deal public arts programs should be aware that they may not have legal title to their art, and that the U.S. government could come calling when their artworks change hands.

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10 "Legal Title to Artwork Produced Under the 1930s and 1940s New Deal Administration," Legal Fact Sheet, U.S. General Services Administration, http://www.gsa.gov/portal/content/102438

IFAR ART AUTHENTICATION RESEARCH SERVICE

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THE DE KOONING THAT WASN'T: A BAD PENNY RESURFACES (AS A PHONY NICKEL)

LISA DUFFY-ZEBALLOS*

FIGURE 1. Untitled painting submitted to IFAR as a possible Willem de Kooning, signed "de Kooning" lower right.

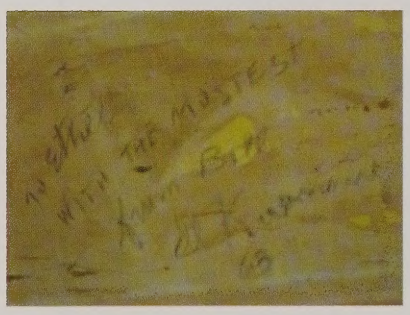

FIGURE 2. Inscription on the verso "To Ethel/ WITH THE MOSTEST/ from Bill/ de Kooning/63".

It is a testament to the longevity of IFAR's Authentication Research Service that we occasionally have the opportunity to witness the bizarre metamorphoses of questionable works as they bid for authenticity. A case in point concerned a purported Willem de Kooning *Woman* that clearly wasn't all that it seemed.

The work in question, depicting the painted silhouette of a faceless woman, was signed and dated lower right, faintly in pen, "de Kooning/63" **(FIG. 1).** It bore a dedication on the verso: "To Ethel/WITH THE MOSTEST/from Bill/ de Kooning/63" **(FIG. 2).** Although the painting's dripped facture was, to say the least, atypical of de Kooning, IFAR accepted the work for research, as we were intrigued by the inscription and knew we could bring expertise to bear on the attribution. This we did; but in the course of our research, and later, we discovered evidence from IFAR's own files that while this painting may have ended up as a wannabe "de Kooning," it didn't start out that way.

The owner had purchased the painting several years earlier from a now-defunct gallery in New York as an original de Kooning, but after questions were raised about its attribution, he brought it to IFAR. First impressions were not promising. The faceless dripped apodal figure bore scant resemblance to the large-breasted, sexually aggressive creatures that inhabit de Kooning's *Woman* paintings of the 1960s. The painting's 1963 date made it even more problematic. In that year, de Kooning moved into his East Hampton studio, and his works from this period, such as *Clam Diggers* and *Two Standing Women,* feature voluptuous, sun-kissed pinup girls inspired by popular media images. This also was the period of the so-called 'Door Cycle' series of frontal standing nudes that de Kooning painted on hollow wooden door panels, only three of which are known today: *Woman Sag Harbor, Woman* and *Woman Springs,* as well as several smaller related works on paper.[1]

> "We discovered evidence from IFAR's own files that while this painting may have ended up as a wannabe 'de Kooning,' it didn't start out that way."

* Lisa Duffy-Zeballos is the Art Research Director of IFAR.

1 One of the latter, *Woman Accabonac* (1966), is a transfer image of *Woman Sag Harbor* on paper mounted onto canvas. Judith Hoos Fox, *Willem de Kooning's Door Cycle* (New York: Whitney Museum of American Art, 1996), pp. 1-8.

FIGURE 3. Impression of stretcher bars and metal stabilizing brackets on the verso of the canvas.

The owner believed his painting to be a unique variation on the Door Cycle, where instead of wood panel, the canvas was stretched over a metal screen door. This theory was quickly ruled out by a conservator who noted that the stain on the verso of the canvas **(FIG. 3)** was caused not by oxidation of a metal door frame, but by acid migration from a wooden stretcher, and that the impressions in the upper left and right corners were left by metal brackets commonly used to stabilize wooden stretchers. Moreover, the absence of staining and bracket marks on the bottom left and right corners of the canvas indicated that the painting had been cut down.

WHO WAS THE "ETHEL WITH THE MOSTEST"?

While de Kooning frequently dedicated drawings and other small works on paper to his friends and patrons, he rarely wrote inscriptions on his larger paintings on canvas, and when he did include inscriptions, they were almost always found on the *recto*. Such is the case with a 1967 *Untitled* oil and charcoal on paper which he dedicated to the collector Joseph Hirshhorn, "Anything You Want/Any Time/ I Say/To Joe/ Love Bill".

The owner had been told when he purchased the work that the Ethel in the inscription probably referred to the artist Ethel Schwabacher (1903-1984), who knew de Kooning during the 1940s and 1950s, but we could find no reference to de Kooning having dedicated a work to Schwabacher, who in any case, appears to have been disillusioned with de Kooning's *Woman* paintings. Research also ruled out Ethel Baziotes, wife of the painter William Baziotes.

We then turned our attention to a very different Ethel within de Kooning's orbit; Ethel Redner Scull (1921-2001), the crown princess of the Scull's Angels taxi cab empire and upstart collector in the New York art scene of the 1950s and 1960s. Hailed as the 'Mom and Pop' of Pop Art, Ethel and her husband Robert acquired works that are now Pop Art masterpieces, including Andy Warhol's *200 One Dollar Bills,* Jasper Johns' *Out the Window,* and James Rosenquist's panoramic *F-111,* some of which were sold at a now infamous 1973 auction. Throughout the 1960s, Ethel (nicknamed "Spike"), earned a starring role in a number of iconic artworks; she is depicted in Warhol's *Ethel Scull 36 Times* **(FIG. 4),** and the sculptor George Segal cast the couple in plaster. Before they turned to Pop Art, however, the Sculls collected Abstract Expressionist works, acquiring several abstract paintings by de Kooning, including two that Robert titled *Spike's Folly I* and *Spike's Folly II* in honor of Ethel.

FIGURE 4. ANDY WARHOL, ***Ethel Scull 36 Times,*** 1963. Acrylic and silkscreen on canvas. 80 x 144 in. (203.2 x 365.8 cm). Jointly owned by the Whitney Museum of American Art and The Metropolitan Museum of Art. © 2015 The Andy Warhol Foundation for the Visual Arts/ARS NY.

FIGURE 5.
WILLEM DE KOONING, *Untitled (Woman),* ca. 1955-1957. Black ink on paper. 24 x 19 in. (60.96 x 48.26 cm). Private Collection. © 2015 The Willem de Kooning Foundation/ ARS NY.

Another one of the Sculls' acquisitions was a small 1955-1957 ink drawing, *Untitled (Woman),* cheekily dedicated on the recto (lower right): "To Ethel/ THE HOSTESS/ WITH THE MOSTEST/ From Bill/ de Kooning" **(FIG. 5).**[2] The inscription was a play on a phrase from the 1950s Broadway musical (and film) "Call Me Madam" by Irving Berlin starring Ethel Merman, based on the life of the legendary Washington, D.C. fundraiser Perle Mesta, "the hostess with the mostest." De Kooning's dedication undoubtedly was intended as a pun on Ethel Scull's name, as well as a humorous reference to her fondness for hosting lavish society parties and benefits.

Sadly for Ethel Scull, the party ended in 1973 when she broke her back while on vacation. In that same year, with her marriage crumbling, Robert Scull unilaterally decided to auction a quarter of the couple's art collection at Sotheby's. Soon afterwards he sued for divorce, setting off a decade-long court battle over the division of their remaining artworks. IFAR examined copies of both the 1978[3] and 1985[4] inventories of the Scull collection, records of sales from the collection prior to their separation in 1974,[5] and auction sales from Robert's and Ethel's individual estates following their divorce,[6] but found no mention of a work matching the description of the IFAR painting, nor was there any reference to a painting by de Kooning dedicated to Ethel. De Kooning's drawing, dedicated to Ethel, however, remained in Ethel Scull's collection until May 1990, when it was put up for auction at Sotheby's. It resurfaced in 2001 for an auction at Christie's. The drawing was illustrated with its inscription in both auction catalogues.

> "The inscription was a play on a phrase from the 1950s Broadway musical (and film) 'Call Me Madam' by Irving Berlin ..."

Totally separate from the painting's stylistic anomalies for a work by de Kooning, IFAR's specialists thought it unlikely that de Kooning, who delighted in the quirkiness of American slang, would have reused the same humorous quip on two artworks dedicated to the same woman, suggesting that someone who saw the Sculls' *Untitled (Woman)* at auction simply copied that inscription onto the verso of the IFAR painting.

AN UNLIKELY WOMAN

Compounding the painting's spurious provenance, its facture, style, and figuration were utterly unconvincing as a work by de Kooning. In particular, the sinuously dripped female figure appeared amateurish, insipid, and, as already noted, completely uncharacteristic of de Kooning's *Women.* By far the most anomalous aspect of the painting's style was its dripped figural composition. Although in de Kooning's paintings one occasionally sees gravitational drips from thinned paint applied with a brush, the drips in the IFAR painting were, in one specialist's words, "deliberate linear elements that the artist trailed around the form," dripped Pollock-like off a stick. And while

2 Sotheby's NY, May 9, 1990, lot 118; and Christie's NY, May 17, 2001, lot 115.

3 The first inventory was conducted by Sotheby Parke Bernet. Richard Bellamy Papers, III. E.5. The Museum of Modern Art Archives, New York.

4 The 1985 inventory and appraisal were carried out by Lucy Havelock-Allan (now Lucy Mitchell-Inness). Richard Bellamy Papers, III. E.3. The Museum of Modern Art Archives, New York.

5 Sotheby Parke Bernet, Oct. 13, 1965; Sotheby Parke Bernet, NY, Nov. 18, 1970; Sotheby's NY, Oct. 18, 1973.

6 Sotheby's NY, Nov. 10-11, 1986; Christie's NY, Dec. 14, 1987; Sotheby's NY, May 8-9, 1990; Sotheby's NY, Oct. 4, 1990; Sotheby's NY, Nov. 20, 1996.

it is plausible that de Kooning may have experimented with Pollock's signature dripped style, such experiments, if they occurred, would have taken place long before 1963.

Indeed, its fake signature — clearly added at a later date — and inscription notwithstanding, the IFAR painting was so anomalous, it seemed doubtful that it had ever been intended to resemble a de Kooning. It seemed more like a clumsy attempt to imitate Jackson Pollock, an assessment that turned out to be even more accurate than we realized at the time.

A "POLLOCK" REDISCOVERED

Sometime after writing our negative report on the "de Kooning," while perusing old correspondence files that include unsolicited and unlogged inquiries, we serendipitously came across photographs that were attached to a letter dated 1996 concerning an abstract painting that the owner believed was by Jackson Pollock **(FIG. 6).** IFAR's then-Executive Director (Constance Lowenthal) sent a brief reply declining to take the painting on for formal research, noting in passing that the painting seemed to be more "in the style of" Pollock than "by" Pollock himself.

FIGURE 6. 1996 photograph showing the IFAR work prior to being cut down on the bottom.

The photographs showed the very same painting of a faceless woman that was later submitted to IFAR as a de Kooning, but with some very telling changes. As our examining conservator had surmised, the photos made clear that the painting was originally mounted onto a wooden strainer and the canvas had been severely cropped at the bottom. An inscription on the back of one of the 1996 photos gave the original dimensions as 72" x 23½", but by the time it was submitted to IFAR as a purported de Kooning, it was only 57" high — 15 inches had disappeared! The reason was immediately clear: according to a handwritten letter submitted with the photos by the then-owner, the painting originally bore a faint *Pollock* signature in the lower left corner of the recto.

> "... By the time it was submitted to IFAR as a purported de Kooning, it was only 57" high—15 inches had disappeared!"

The photographs were even more significant for what they did *not* show, namely the inscription "To Ethel/WITH THE MOSTEST" on the verso **(FIGS. 7 A & B)** *or* the de Kooning signature on the recto, both of which had clearly been added *after* IFAR's Executive Director had cast doubts on the Pollock attribution. We informed the owner of this new information, but *who* actually perpetrated the scam and *when* remain open questions. Clearly, foul play was involved at some point in the chain.

As for IFAR, our discovery of this forgotten and, at the time, casual correspondence renewed our appreciation for the wealth of information contained within our general correspondence files. It has spurred a project to review decades of old correspondence so that they can become an even more valuable resource in the future.

FIGURES 7A and **B. A (top):** Verso of the IFAR painting with the inscription "To Ethel WITH THE MOSTEST/From Bill/de Kooning/63"; **B (bottom):** Verso of the same IFAR painting in 1996, prior to inscription being added.

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THE LEONARD A. LAUDER CUBIST COLLECTION: A CONVERSATION WITH EMILY BRAUN AND PEPE KARMEL

An *IFAR Evening* — February 10, 2015

INTRODUCTION

In October 2013, Leonard A. Lauder announced an extraordinary promised gift of 78 Cubist paintings to The Metropolitan Museum of Art in New York. He donated an additional 3 Cubist works outright to the museum. In fall 2014, the Met organized an exhibition of the Cubist works from the Leonard A. Lauder Collection (October 20, 2014 – February 16, 2015). IFAR hosted an *IFAR Evening* to coincide with the exhibition, featuring a conversation between Emily Braun, Mr. Lauder's longtime curator and a co-curator of the Met exhibition, and Pepe Karmel, a noted scholar of Cubism and a professor at NYU. The sold-out *IFAR Evening* was held at the historic Players Club opposite Gramercy Park in New York. Below is the edited conversation and lively Q&A that followed.

EMILY (MIMI) BRAUN

Distinguished Professor, Hunter College and the Graduate Center, CUNY; Curator of the Leonard A. Lauder Collection

PEPE KARMEL

Associate Professor, Dept. of Art History, NYU; Author, *Picasso and the Invention of Cubism*

"If you can't tell what it is, it must be Cubism."

PEPE KARMEL (PK): You may remember the headline from the *New York Times* announcing Leonard Lauder's gift to the Metropolitan Museum **(FIG. 1).**

Mimi, what was it like on the day this article appeared? Your email and phone must have been flooded.

The New York Times

$1 Billion Gift Gives Met a New Perspective (Cubist)

Obama Pushes Choice to Join Appeals Court

THREAT TO BLOCK DEBATE ON GUNS APPEARS TO FADE

FIGURE 1. Front page of *The New York Times,* April 10, 2013, announcing Leonard Lauder's gift to The Metropolitan Museum of Art.

EMILY BRAUN (EB): They were. The actual gift had been made the day before. Once the contracts had been signed, a button was pressed to allow us to release the story. We did get a lot of emails, and the actor Steve Martin tweeted. We were told that it was the first time a nude was on the front page of the *New York Times*, above the fold, no pun intended. But several people asked, "What nude?" An introduction to Cubism!

PK: If you can't tell what it is, it must be Cubism.

Let's start our discussion with this photograph, at the entry to the Met exhibition, showing what the collection looks like in Leonard Lauder's apartment **(FIG. 2).** It is extraordinary to think that a group of paintings of this quality could be in somebody's home. I have had the good fortune on a few occasions of seeing it, and it takes my breath away every time.

FIGURE 2. View of Leonard Lauder's living room with 8 Cubist works. © 2015 MMA. Ph. Juan Trujillo.

EB: It was Rebecca Rabinow, my co-curator on the exhibition, who decided to begin the installation of the show with this photograph. Rebecca recounted coming into the apartment for the first time and encountering this living room wall packed with pictures. Then she turned to the right and saw the wall with the two Légers, also reproduced in a photograph in the exhibition, and then she turned to me and said, "Mimi, I have to sit down now." She remembered this experience of seeing so many extraordinary works, some of which she knew from textbooks, as being somewhat overwhelming.

CUBIST COLLECTORS

The Steins

PK: Before going further, let's underscore the generosity of the gift to the Met. The Lauder Collection is by far the greatest collection of Cubism in private hands, better than the Cubism collections of most museums. It is difficult, in fact, to think of many museums that have anything even approaching it. Significantly, the collection was very self-consciously put together within the heritage of Cubist collecting. That has been a big point in your thinking and Leonard's over the years, so I'd like to begin with a brief review of earlier great Cubist collections, going back to those of Leo and Gertrude Stein, and their siblings Michael and Sarah. Here **(FIG. 3)** we see Gertrude in her study at 27 rue de Fleurus. She and Leo both bought directly from Picasso and also via the art dealer Daniel-Henry Kahnweiler, whom we'll be hearing more about. There was a wonderful exhibition about the Stein collection at the Met back in 2012.[1] What happened to that collection after Stein's death? That's an interesting piece of history.

FIGURE 3. Photograph of Gertrude Stein in her study at 27 rue de Fleurus.

"The Lauder Collection is by far the greatest collection of Cubism in private hands, better than the Cubism collections of most museums … [and it] was very self-consciously put together within the heritage of Cubist collecting."

EB: It was Gertrude's brother Leo who was really responsible for putting together their original collection, including Cézanne, Renoir, and Picasso up to around 1910. Michael and Sarah were more interested in Matisse. As the 2012 exhibition demonstrated, when Leo and Gertrude decided no longer to live together, the collection as a whole was split into several parts, with Leo taking the Renoirs and the Cézanne *Apples,* while Gertrude kept the Picassos. Alice B. Toklas had begun living with Gertrude a few years earlier, and remained with her until the end of her life. When Gertrude died, Toklas inherited Gertrude's collection for use in her lifetime and thereafter it was to go to Gertrude's nephew Allan Stein. It was a complicated situation. The short of it is that eventually a group of works was sold to a consortium consisting largely of Museum of Modern Art (MoMA) trustees.[2]

PK: So, some of the collection went directly to the Modern, and some of it went into the marketplace.

EB: Those trustees who did buy bought on the condition that they would leave six works to the Museum of Modern Art.

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1 "The Steins Collect: Matisse, Picasso, and the Parisian Avant-Garde," The Metropolitan Museum of Art, February 28-June 3, 2012.

2 On the terms of Gertrude Stein's will and estate, see Edward Burns, "Alice Toklas and the Gertrude Stein Collection, 1946-1967," in *The Steins Collect,* eds. Janet Bishop, Cécile Debray and Rebecca Rabinow (San Francisco: San Francisco Museum of Modern Art, 2011), pp. 259-265; the history of the purchase by the MoMA consortium is recounted by Richard Feigen, *Tales from the Art Crypt* (New York: Alfred A. Knopf, 2000), pp. 274-296.

FIGURES 4A and **B.** Photo of Daniel-Henry Kahnweiler, winter 1910-11, next to Picasso's portrait, ***Daniel-Henry Kahnweiler,*** fall 1910. Oil on canvas, 100.4 x 72.4 cm. Art Institute of Chicago. © 2015 Estate of Pablo Picasso/ARS NY.

Daniel-Henry Kahnweiler

PK: The next great Cubism collector after Gertrude Stein was the art dealer Daniel-Henry Kahnweiler **(FIGS. 4A & B),** who represented Picasso, Braque, Léger, Gris, and also Vlaminck and Derain — a glory list of great early Modern artists. He was a surprising figure: a young German-Jewish dealer who moved to Paris with no track record, opened up a shoe-box-sized gallery, and put together an astonishing collection. He had an extraordinary eye for avant-garde art.

EB: He was a visionary. A biography of Kahnweiler by Pierre Assouline[3] recounts how he first visited Picasso's studio in 1907 when *Les Demoiselles d'Avignon* was there. Picasso was already a name to be reckoned with. Dealers were circling around, including Vollard, who was buying and selling his pictures but not representing him. We have to remember that when other artists, critics and dealers came to Picasso's studio to see *Les Demoiselles d'Avignon*, their reaction was one of outrage, disbelief, and shock — or they thought the painting was a failure. Kahnweiler just said, "Tell me about it." This created a bond between the two of them because, rather than give a reaction, he let Picasso speak about it. Picasso was very grateful and started to trust Kahnweiler from that moment on.

PK: Yes, but on the other hand, he didn't actually *buy* the painting. That tells us something as well.

EB: Speaking of Kahnweiler's gallery stock, I want to mention that, during the many years that we were researching the Lauder collection — and then when we were finalizing the catalogue entries for the Met exhibition — it was very important to us to be able to document Kahnweiler's inventory numbers, so we could be sure which of the Lauder paintings had belonged to Kahnweiler and which had not. The Kahnweiler archive remains in the hands of an heir named Quentin Laurens, who runs the Galerie Leiris in Paris, and if it were not for Pepe Karmel, we would not have been able to trace the Kahnweiler inventory lists for Braque's and Picasso's Cubist works. Pepe is the only person ever to have gained access to the lists, and he kindly shared them with us and other scholars.

PK: That shows the role of serendipity in research. I happened to go to the Galerie Leiris while Monsieur Laurens was on vacation, so the person in charge was Maurice Jardot, a wonderful, very elderly gentleman who had worked there for many decades. While I was looking at some other documents, he brought out a little leather-covered notebook and said, "This was Mr. Kahnweiler's stockbook. Would you like to see it?" Would I like to see it?! I asked whether I could photocopy it, but the answer was no, so I spent the next four days copying as much information as I possibly could.

EB: On the back of works on paper, Kahnweiler would write an inventory number, but on the crossbars of the stretchers on paintings, he would paste a label. The back of one of the Picassos in the Lauder

3 Pierre Assouline, *An Artful Life: A Biography of D. H. Kahnweiler, 1884-1979.* Charles Ruas, trans. (New York: Grove Weidenfeld, 1990).

FIGURE 5. Back of Picasso's ***The Scallop Shell,*** spring 1912, showing Kahnweiler label. Leonard A. Lauder Cubist Collection. Ph. MMA.

Collection, *The Scallop Shell,* shows a Kahnweiler label **(FIG. 5).** The number ninety-five on it correlates with the inventory number in Kahnweiler's stockbook. He also had a photo book, in which he included a photograph of each work in black and white, with a separate photo number. He was probably the first dealer to methodically photograph everything that came into his stock. Then he sent those black and white photographs to potential collectors, and also to periodicals across the world. That is how the influence of Cubism spread, for example, into Central and Eastern Europe. The back of *The Scallop Shell* shows that pictures have lives, that they are vulnerable material objects, a piece of canvas stretched over a wooden frame, moving from place to place. The inscriptions and stickers are like a palimpsest showing the life of the picture — the borders that it has crossed and the fortunes made and lost, because other dealers and collectors may have left their labels as well. The backs of pictures are almost as fascinating as the front.

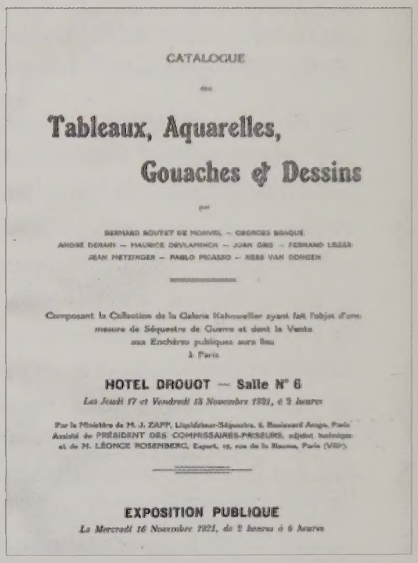
PK: Kahnweiler didn't sell that many paintings in the years before World War I, but he did sell some of them, many to Roger Dutilleul, one of the important early collectors of Cubism **(FIG. 6).** Dutilleul's collection went to his nephew Jean Masurel, who, in turn, acquired more Cubist pictures. Much of it ended up in a museum in Villeneuve-d'Ascq, a suburb of Lille, a place to which we should probably all make a pilgrimage. But some of Dutilleul's collection has come on the market and contributed to the Lauder Collection, as we will see. Meanwhile a terrible thing happened to Kahnweiler. When World War I broke out, the French government declared him an enemy alien and seized his gallery stock. It sat in storage for several years, and then in 1921, after the war, they decided to sell it.

FIGURE 6. Photograph of Roger Dutilleul with his art collection on the rue de Monceau, Paris, ca. 1950s. Musée d'Art Moderne du Nord, Villeneuve d'Ascq, Lille.

> "It is true, as Picasso later said, that for art to become very valuable it must first be very cheap. So [the Kahnweiler sale] was that moment of cheapness."

EB: We don't actually know when the collection was sequestered. Kahnweiler had been travelling in the summer of 1914. When the war broke out, he remained exiled, first in Italy then in Switzerland. As he was a German national, his stock, which consisted of about three thousand works of art, was seized as part of a French government effort to sell property owned by Germans to pay German war reparations.

PK: There were four auctions between 1921 and 1923, which created a tremendous commotion **(FIG. 7).** The artists were furious, as you can imagine, partly out of loyalty to Kahnweiler and partly because they did not want their work dumped on the market in quantity. It is true, as Picasso later said, that for art to become very valuable it must first be very cheap. So this was that moment



CATALOGUE

Tableaux, Aquarelles, Gouaches & Dessins

HOTEL DROUOT — Salle N° 6

EXPOSITION PUBLIQUE

FIGURE 7. Title page, Hôtel Drouot auction catalogue for the November 17-18, 1921 Kahnweiler sale.

of cheapness. But the artists were angry. The government needed a Cubism expert to make estimates for the works to be auctioned, and they got Léonce Rosenberg, the brother of Paul Rosenberg, to serve as the expert for the sale. Braque was so angry about Léonce's participation in the auction that, at the first display of the works, he marched up and hit him in the face. Braque was a semi-pro boxer, so that could not have been fun.

"The Essential Cubism" refers to the essential Cubists—Picasso, Braque, Léger, and Gris."

EB: Braque used to warm up in the morning against a boxing bag so that his fingers would be warm before he started to paint.

PK: Exactly. I don't know what that explains about Cubism. In any case, the cops wanted to arrest Braque for punching Rosenberg. At the police station, Léger and the other artists, who, like Braque, were veterans of the war, explained that Braque was a war veteran, and simply *had* to punch Rosenberg. So the police let Braque go. If the sale was a disaster for Kahnweiler and the artists, it was also the starting point for a lot of great collections, particularly that of Raoul La Roche.

EB: Amédée Ozenfant, the artist who was a member of the Purist group, was the buyer for La Roche, advising him on the collection.

G. F. Reber and Douglas Cooper

PK: Another great collector of Cubism, perhaps the greatest before Lauder, was Gottlieb Friedrich Reber. How many pictures did he acquire ultimately?

EB: By 1929, he owned approximately 200 paintings, sculptures, and works on paper by Cubist artists **(FIG. 8).**

PK: Reber was quite wealthy in the 1920s when he put together the collection, and then he lost a lot of money in the global stock market crash of 1929 and started selling off the collection. He was in real difficulty by the end of the '30s and the '40s. But just as the Kahnweiler sale had created an opportunity for collectors like La Roche, Reber's problems created an opportunity for a brilliant young English art historian, Douglas Cooper **(FIG. 9).**

FIGURE 8. (left): Max Beckmann drawing of Gottlieb Friedrich Reber, June 15, 1928. **(right):** A room in Reber's Château de Béthusy, Lausanne, Switzerland in the 1920s.

FIGURE 9. 1950s David Douglas Duncan photograph showing Pablo Picasso and Jacqueline Roque (at center) with Douglas Cooper circled in red on the right.

EB: Cooper was both a collector and scholar of Cubism. He acquired many pictures from Reber in the 1930s. Cooper wrote the Juan Gris catalogue raisonné,[4] and edited and translated Gris' letters (1956). He was also a dealer. He began with the Freddy Mayor Gallery in London in the mid '30s and soon got out of that partnership and started collecting on his own. He amassed an extraordinary collection of Cubism, although not as big as Reber's. By all accounts, his was a very difficult

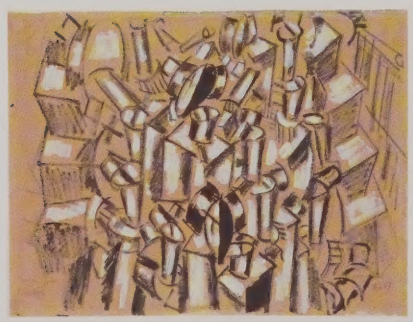
4 Douglas Cooper, with Margaret Potter, *Juan Gris: Catalogue raisonné de l'oeuvre peint.* 2 vols. (Paris: Berggruen, 1977); *Catalogue Raisonné of the Paintings.* 2 vols. 2nd ed. Updated by Alan Hyman and Elizabeth Snowden. (San Francisco: Alan Wofsy Fine Arts, 2014).

personality. You can read about that in John Richardson's autobiography.

PK: Yes, Richardson's *The Sorcerer's Apprentice* (1999) describes their life together in Provence, where Cooper had bought a château and filled it with Cubist paintings. Cooper became friends with many of the artists living in the south of France, but so badly alienated his house staff that they allegedly started pilfering works from him. It was not a good situation.

Yet Cooper continued to do extraordinary shows, right up to "The Essential Cubism," organized for the Tate Gallery in 1983, a foundational document for how to think about Cubism. He curated it with Gary Tinterow, a longtime curator at the Metropolitan Museum and now director of the Houston Museum of Fine Arts.

EB: "The Essential Cubism" refers to the essential Cubists — Picasso, Braque, Léger, and Gris. Cooper used the term "essential," while Kahnweiler called them the four "pathfinders." But they were talking about the same four artists. Cooper recognized what he knew Kahnweiler had done in selecting them, and followed suit in his own collecting and curating. Leonard Lauder had already started collecting Cubism by 1983, so he went to see "The Essential Cubism" in London. That visit was the first and only time he met Douglas Cooper, who, he said, was very nice to him — at least at that meeting. The show made a huge impression on Lauder.



FIGURES 10A and **B.** The first two Cubist works purchased by Leonard Lauder in 1976. **FERNAND LÉGER, A (left):** ***Study for the Staircase,*** 1913. Gouache and oil on tan wove paper, 50.2 x 65.1 cm. **B (right):** ***Study for the Aviator,*** 1920. Graphite, ink, and watercolor on tan wove paper. 28.5 x 38.1 cm. Both: Leonard A. Lauder Cubist Collection. Both Ph. MMA and © 2015 ARS NY/ADAGP, Paris.

LEONARD LAUDER AS A COLLECTOR

PK: That brings us to the beginning of Mr. Lauder's activity collecting Cubism. The first two Cubist works that he bought were both works on paper.

EB: Léger's *Study for the Staircase* **(FIG. 10A)** was bought from Heinz Berggruen; *Study for the Aviator* **(FIG. 10B)** was bought at auction, when Leonard still bid at auction himself — always, as he said, a bit terrified. These two drawings were his first Cubist works, but they were not the first works he collected. Ever since he was a teenager, he had collected postcards. Recently, he gave that collection, comprising over a hundred thousand cards, to the Museum of Fine Arts, Boston, where he also endowed a department for visual culture and a curator's chair. The MFA has done two beautiful exhibitions with my colleague Lynda Klich, the curator of the postcard collection. Leonard also put together *several* great poster collections. I'm not sure people realize that in 1986 he gave the Met a fantastic collection of American literary posters from the 1890s. The catalogue for that show is still the standard reference for literary posters; at auctions, you will occasionally see "Kiehl/Lauder," meaning David Kiehl, who did the book on the Lauder collection.[5] And, as with the Cubist collection, Leonard continues to buy and add. Just a few months ago, he purchased another dozen literary posters for the Met, always expanding on that collection. Leonard also has collected fin-de-siècle French posters, ski posters, shipping posters, and modern Swiss posters and has donated some of these in the past to the Museum of Modern Art and to the Zimmerli Museum at Rutgers.

Before 1983, Leonard was simultaneously collecting, as he called it, "serious art," although he says that tongue-in-cheek, because for him postcards and posters are also very serious things. He had started to collect American Realists in the 1970s. He

5 David W. Kiehl, Philip Dennis Cate, Nancy Finlay, *American Art Posters of the 1890s in the Metropolitan Museum of Art, including the Leonard A. Lauder Collection.* (New York: The Metropolitan Museum of Art, 1987).

and his first wife Evelyn bought works by Philip Pearlstein and John Clem Clarke and Richard Lindner. He was attracted to Lindner because of the affinity of his work to a German Bauhaus aesthetic. Leonard had always been fascinated by Oskar Schlemmer's *Bauhaus Stairway* (1932) in the Museum of Modern Art.

He started to collect Klimt and Schiele. He has beautiful paintings by Klimt. Leonard's activity in this area is not well known; it's his brother Ronald who is better known as a Secession collector. Leonard also built an incredible Secession poster collection, some of which he donated to the Neue Galerie. He also donated his entire Wiener Werkstätte postcard collection to the Neue Galerie.

He also had paintings by Kandinsky and Schlemmer, which are hanging on the walls now.

PK: So, without the Cubist works, the walls aren't naked …

EB: They're not naked, no.

FIGURE 11. PABLO PICASSO, *Carafe and Candlestick,* autumn 1909. Oil on canvas, 54.6 x 73 cm. Leonard A. Lauder Cubist Collection. Ph. MMA. © 2015 Estate of Pablo Picasso/ARS NY.

PK: The first Cubist painting on canvas that Leonard bought — in 1980 from Eugene Thaw — was a still life **(FIG. 11).** In your interview with Leonard, published in the exhibition catalogue, he says that this picture "had everything."[6] What did he mean?

EB: That's a typical Leonard Lauder statement, "It had everything." You'll notice in the interview that I did not ask him to expand on that, but if I did, he would have discussed the painting — *Carafe and Candlestick* — in aesthetic terms. For example, even though it looks unfinished, it is a finished picture because it has everything. The white background, which is actually painted on the sizing — it is not a bare canvas; it is a layer of white paint on top of the sizing in the gesso ground — is deliberately done in emulation of Cézanne. You could not add a brushstroke to this picture because it would put everything out of whack. It's just perfect. It has everything in that respect — the composition, the balance, and also the way the objects are seen from different points of view, not radically yet, not yet broken up. But Leonard had already intuited that Cubism was doing something different with perspective and light/dark modeling, and this picture was a testament to that.

Leonard also commented on the technique of the painting, which was so perfectly resolved, like a gouache, as he described it, because, although it was transparent, it was actually an oil painting. So all of these different things that the eye could see, and take account of, mean that the painting has everything.

PK: As if that were not enough for one year, he also bought the extraordinary and truly historic work, *The Scallop Shell* from 1912 **(FIG. 12),** which he describes in the interview as "the epiphany." Can you explain that to us?

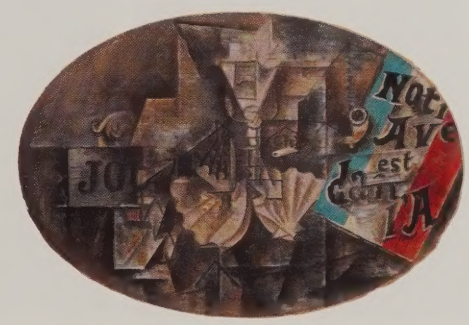


FIGURE 12. PABLO PICASSO, *The Scallop Shell: "Notre Avenir est dans l'air,"* spring 1912. Enamel and oil on canvas, 38.1 x 55.2 cm. (For verso, see **FIG. 5.**) Leonard A. Lauder Cubist Collection. Ph. MMA. © 2015 Estate of Pablo Picasso/ARS NY.

EB: A friend who knew he had started to acquire Cubist pictures invited him to a lecture by the late Kirk Varnedoe at the Institute of Fine Arts. Leonard

6 "A Collector's Story: Leonard A. Lauder and Emily Braun in Conversation," in Emily Braun and Rebecca Rabinow, Eds., *Cubism — The Leonard A. Lauder Collection.* (New York: The Metropolitan Museum of Art, 2014), p. 8.

was seated in the darkened lecture hall, and the slide image of this painting came up. Kirk described it as one of the most important Cubist pictures ever painted because it was the transition between Analytic and Synthetic Cubism. Leonard thought to himself, "This is one of the most important Cubist pictures, and I own it, so I must be on to something." I think it was a validation of his direction, which is fascinating to consider because everyone knew and has known since the early twentieth century that Cubism is the most important movement of the first half of the twentieth century, if not the entire twentieth century, yet people were not collecting it in the '70s, '80s, '90s, the way they were Impressionism and Post-Impressionism.

FIGURE 13. PABLO PICASSO. ***Head of a Woman (Fernande),*** plaster model, 1909, bronze cast, 1926-27, 41.6 x 23.1 x 27.4 cm. Leonard A. Lauder Cubist Collection. Ph. MMA. © 2015 Estate of Pablo Picasso/ARS NY.

PK: Another great acquisition was the extraordinary 1909 sculpture, *Head of a Woman* **(FIG. 13),** showing Picasso's mistress Fernande Olivier, which translates Cubist faceting and style into three dimensions.

EB: Leonard's bust of Fernande, by the way, is one of the original casts that Ambroise Vollard made, although not until the 1920s. It's not a *surmoulage*; it is one of the few that the dealer Vollard had cast under his authority.

Moving forward, *Checkerboard and Playing Cards* **(FIG. 14A),** a lovely little Juan Gris gouache, was formerly in the collection of MoMA's founding director, Alfred Barr, Jr. Leonard acquired it in 1985. By this point in the mid '80s, Leonard had accumulated a critical mass of eight major Cubist works. We might not consider the little Gris a major work, although it "has everything" as well — a perfectly resolved, finished work on paper — but he also had a major Léger oil **(FIG. 14B),** major Picassos, and two important Braques.

PK: But then came a really critical event, the death of Douglas Cooper in 1984. He left his extraordinary collection to his companion, William McCarty, a noted interior designer, whom Cooper adopted legally as his son. Why did he do that?

FIGURES 14A and **B. A (top): JUAN GRIS,** ***Checkerboard and Playing Cards,*** 1915. Gouache, graphite, and resin on cream-colored wove paper, mounted to paperboard, 21 x 29.8 cm. **B (right): FERNAND LÉGER,** ***The Smoker,*** 1914. Oil on canvas, 100.3 x 81.3 cm. © 2015 ARS NY/ADAGP, Paris. Both: Leonard A. Lauder Cubist Collection. Both Ph. MMA.

EB: There were tax and estate reasons, and also they had been lovers and were still very close.

PK: I think he also wanted to make sure his family in England did not get the collection instead of Bill McCarty, who kept some of it but then wanted to place the rest in good hands. You fill in the history here.

EB: To his credit, Bill McCarty wanted to keep as much of the collection intact as possible, and he hired Angelica Rudenstine to help him decide to whom it should be offered. Angelica was assisted by Dorothy Kosinski, who is now the director of the Phillips Collection in Washington and was then living in Switzerland and managing the collection while it was on deposit in the Geneva Freeport.

The Getty had been approached. Dealers also wanted to buy it. But Angelica had heard that Leonard Lauder had started to collect Cubism, so a visit was arranged to the house. Afterward, she

recommended to Billy that Leonard be given the first offer, and Leonard flew to Geneva. As he tells it, he was also offered the collection by a couple of dealers, who didn't know that he was going to take the plane to Geneva that same night.

Leonard describes the event as the FAO Schwarz dream that we all have; you are taken to the toy store and allowed to choose whatever you want. He ended up buying six paintings and fifteen works on paper. It is often misstated that Leonard's collection is just the Cooper Collection purchase, which is not the case at all. In fact, he already had more paintings than he bought from Cooper at that point, and he went on to more than double the size of the collection after that purchase in the fall of 1986. It is public information now, so I can say that it cost $22 million for the first 16 pieces of art from the Cooper Collection: eleven works on paper plus five paintings. Leonard had to borrow money to buy it. Obviously, Picasso's *Nude in an Armchair* alone is now worth well more than that, but he did not buy it as an investment and never has bought art as an investment. He went on to buy five more works from the Cooper estate between 1987 and 1991.

PK: Leonard says in your interview in the catalogue that at one point he had borrowed his salary for the next 26 years in order to buy art. *That* is real commitment and courage — or craziness, I'm not sure which.

Let's look at just a few of the pictures that did come out of the Cooper Collection. There are two absolutely essential Braques from 1908 and 1909: *Trees at L'Estaque* and *Still Life with Metronome* **(FIGS. 15A & B).** *Trees at L'Estaque* was in Braque's first exhibition with Kahnweiler in November 1908, where the word Cubism was coined. The critic Louis Vauxcelles wrote a review where he said that Braque "breaks everything up into little cubes."

EB: That's right, and the *Still Life with Metronome* is one of five from a series of musical instruments that Braque did in late 1909/1910. It is a magnificent piece. By and large, we have kept the Cooper pictures in the frames that Douglas used. We did, however, remove the thick layer of nicotine that

"... It cost $22 million for the first 16 pieces of art from the Cooper Collection: eleven works on paper plus five paintings. Leonard had to borrow money to buy it. Obviously, Picasso's *Nude in an Armchair* alone is now worth well more than that, but he did not buy it as an investment and never has bought art as an investment."

was on the surface of the pictures. This painting had a varnish on it, as did all of the Cooper pictures, although it is not clear who varnished them. In 1983, John Richardson wrote a wonderful article called "Crimes Against the Cubists" regarding the fact that the early Analytic Cubist pictures were never intended by the artists to be varnished, but had been nonetheless.[7] Through the work of our wonderful consulting paintings conservator Lucy Belloli, we were able to remove the varnish on this Braque still life, and all of the tonal values changed. It could not be done on the other Braque — just too intractable. Cooper's *Still Life with*

FIGURE 15A and **B. GEORGES BRAQUE, A (left):** ***Trees at L'Estaque,*** summer 1908. Oil on canvas, 80.3 x 60.2 cm. **B (right):** ***Still Life with Metronome,*** late 1909. Oil on canvas, 81 x 54.1 cm. Both: Leonard A. Lauder Cubist Collection and formerly Douglas Cooper Collection. Both Ph. MMA and © 2015 ARS NY.

7 John Richardson, "Crimes Against the Cubists," *The New York Review of Books,* June 16, 1983. See also, "Crimes Against the Cubists: An Exchange," Letters to the Editor, *The New York Review of Books,* October 13, 1983.

Metronome became the most important Braque in Leonard's collection up until that point.

PK: Richardson's 1983 article is a landmark in Cubist scholarship. He points out that the difference between shiny and matte areas within a given painting is often critical to how a picture is supposed to work. If you varnish it and the whole surface becomes shiny, you are not seeing the picture that Picasso or Braque painted.

Next is another Picasso painting that came from Cooper as well, which relates to the sculpture of Fernande **(FIG. 13)** he had acquired earlier.

EB: *The Nude in an Armchair* **(FIG. 16)** is really an extraordinary picture. It is one of a series of dozens of paintings and drawings — and one sculpture — that Picasso did of Fernande Olivier in the summer of 1909. This is the best one of the whole group, as Jeffrey Weiss demonstrated in his fantastic exhibition on the series at the National Gallery of Art in Washington in 2003.[8]

FIGURE 16. PABLO PICASSO, *Nude in an Armchair,* summer 1909. Oil on canvas, 92.1 x 73 cm. Leonard A. Lauder Cubist Collection. Ph. MMA. © 2015 Estate of Pablo Picasso/ARS NY.

THE FIRST COLLAGES

PK: This brings us to another landmark from the Cooper Collection, right up there with *The Scallop Shell* — and possibly even more important: Braque's *Fruit Dish and Glass,* one of the very first *papiers collés* (collages made with cut and pasted papers), done in August 1912 **(FIG. 17)**.

FIGURE 17. GEORGES BRAQUE, *Fruit Dish and Glass,* autumn 1912. Papier collé, 62.9 x 45.7 cm. Leonard A. Lauder Cubist Collection. Ph. MMA. © 2015 ARS NY.

EB: Note the signature, which was done later; so one shouldn't be looking at that. Braque obviously put it on afterwards at the request of a collector, possibly Cooper himself.

According to Braque, this was the first *papier collé* that he ever did. While staying with Picasso in Sorgues in the south of France, he saw mechanically printed "faux bois" — wood-grain — wallpaper in a store in Avignon. He waited for Picasso to go back to Paris, then he purchased the wallpaper and incorporated it into a series of six drawings. Here, although it seems arbitrary, the wood grain is designating the wooden drawer at the top and the wood paneling of a floor or a wall. This was another milestone piece and also the first *papier collé* that came into the Lauder Collection.

PK: The story that it is *the* first *papier collé* stems from Douglas Cooper. He told it many times in his writings, but the most dramatic version says, "I had just purchased this work, and I invited Braque and his wife over to dinner. I hung it in the din-

8 "Picasso: The Cubist Portraits of Fernande Olivier," National Gallery of Art, Washington, DC, October 1, 2003 — January 19, 2004.

ing room so they would see I had acquired it, and, when Braque sat down, he said, "You know, Douglas, that is a very important picture. It is my first *papier collé*, and it changed the course of modern art." Whether that is literally the case or whether Braque was being nice to his host for dinner, we are not entirely sure, but Braque had earlier stated to Jean Paulhan that this was the first in his series of *papiers collés.*

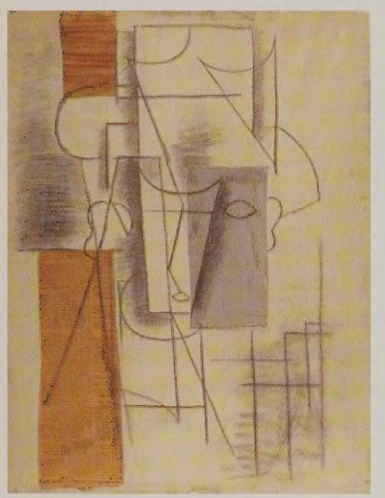


FIGURE 18. PABLO PICASSO, *Head of a Man,* 1912. Papier collé, 62.5 x 47 cm. Leonard A. Lauder Cubist Collection. Ph. Stinehour Photography. © 2015 Estate of Pablo Picasso/ARS NY.

EB: The Picasso collage *Head of a Man* **(FIG. 18)** did not come from the Cooper Collection. It was sold at the Kahnweiler sale and bought by Tristan Tzara, the Dadaist who, along with André Breton, advised several collectors. Tzara kept this collage for himself, and it was acquired for the Lauder collection probably in the 1990s. Interestingly, the *papier collé* was all ready to be purchased when we said to the seller, "Where's the 'passport'?" We had to have proof that the picture had left France legally. The dealer wasn't used to that question, but he provided the "passport" and the work was purchased.

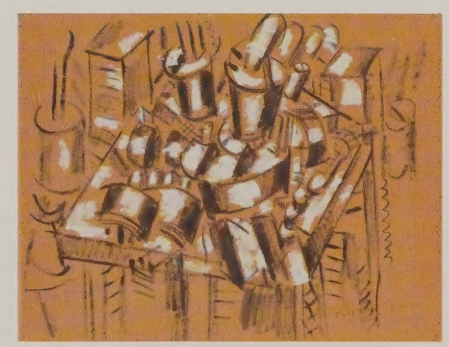
PK: Turning to another key artist, Léger, we have two very different drawings that also came from Douglas Cooper **(FIGS. 19A & B).**

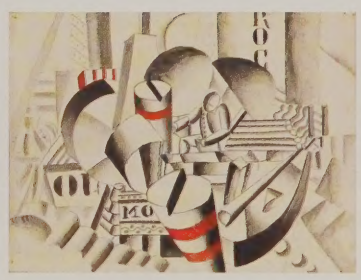
EB: Yes, these are two of the fifteen Cooper works on paper that were so important for Lauder's acquisition. We learned in our research that the little drawing *Tugboat* **(FIG. 19B)** has two dates, 1916 on the lower left of the recto and 1918 on the right. Working with a paper conservator, we confirmed that there were two campaigns on this drawing, the left side done when Léger was a soldier in the trenches and the right side done afterwards.

PK: The next image **(FIG. 20)** shows a fantastic group of six *papiers collés* by Juan Gris. How did this medium end up being such a focus of the Lauder collection?

EB: The Leonard Lauder collection *does* have the finest collection of Gris *papiers collés* anywhere. (Incidentally, we are leaving the Cooper acquisitions now, as there were no Gris *papiers collés* in the Cooper sale to Leonard.) The work on the upper right, which is *The Man at a Café,* is the largest. It belonged to the dealer Bill Acquavella. Leonard had seen it at the Gris exhibition at the National Gallery of Art in Washington twenty-five years earlier, in 1983, and every time he saw Bill, which was many times over the years, he would put his arm around him and say, "Now, aren't you going to buy that house in Palm Beach?" Finally, about ten years ago, Leonard persuaded him to sell it.

The work on the upper left, called *Flowers,* was in Gertrude Stein's collection. It was part of the Museum of Modern Art consortium that Pepe mentioned earlier. When we saw it, there was no doubt that it had to be purchased. But there was an





FIGURES 19A and **B. FERNAND LÉGER, A (left): *Still Life,*** 1913. Gouache and oil on tan wove paper, 47 x 58.4 cm. **B (right): *The Tugboat,*** 1918. Ink, watercolor, gouache, and graphite on off-white wove paper, 24.4 x 32.7 cm. Both: Leonard A. Lauder Cubist Collection. Both Ph. MMA and © 2015 ARS NY/ADAGP, Paris.

FIGURE 20. Six papiers collés by **JUAN GRIS. Upper left:** ***Flowers,*** 1914. 54.9 x 46 cm. **Upper right:** ***The Man at the Café,*** 1914. 99.1 x 71.8 cm. Both Ph. MMA. **Lower center:** ***Bottle of Rosé Wine,*** 1914. 46 x 38.1 cm. Ph. Stinehour Photography. **Lower right:** ***Book and Glass,*** 1914. 65.2 x 50.3 cm. Ph. MMA. All: Leonard A. Lauder Cubist Collection.

opinion by a dealer from whom it was not purchased that the collage had been compromised. Now, why did this person say the collage was compromised? Because, as documented in the Gris catalogue raisonné written by Douglas Cooper, it had undergone a radical restoration by Antoinette King at MoMA when it was purchased by the consortium in the 1960s. Formerly, this work was hanging by an open window in Alice B. Toklas' kitchen on the Rue Christine. The *papier collé* elements were already three-quarters lifting off the support when the work was taken out of the house. So Antoinette King made what was then a radical move — Cooper documented this with King's photographs — taking off all the *papier collé* elements, then cleaning the picture, and then returning the elements.

Fast forward twenty years. We had paper conservators look at it, and they said, "To the contrary, it was absolutely the right thing to do." It didn't affect the appearance of the work; it made it structurally sound. What else were you going to do? Let the pasted papers continue to peel off? The fascinating thing about this collage is that it is the only one with this density of flowers at the top. It was Gertrude who bought Gris; Gris was not on the scene yet when Leo was collecting. We believe that the work is actually an object portrait of Gertrude Stein, who wrote "a rose is a rose is a rose." The phrase "a rose is a rose is a rose" was already being embroidered by Alice B. Toklas on some of the household linens by 1914, so it's not a long shot to suggest that. The work lower center of **FIG. 20,** *Bottle of Rosé Wine,* came out of the estate of James Johnson Sweeney, a MoMA curator and later director of the Guggenheim Museum. So some things are bought at auction, others through dealers, and still others from private collections.

PK: They look like they were *meant* to be together.

EB: In fact, the work on the lower right of **FIG. 20,** Gris' *Book and Glass,* was also in Gertrude Stein's collection, and now it's reunited with *Flowers,* which is rather nice.

PK: I want to digress on the technical question about taking apart a *papier collé*, because when I worked at the Modern we saw documentation of other MoMA works where Antoinette King had done a similar kind of open-heart surgery, revealing fantastic things like what's drawn underneath the pasted elements in one of their Picassos.

EB: *Book and Glass* was also part of that MoMA group, and Antoinette King also restored it. The work is a shape-shifter; the image moves from a still life of objects on a table to a representation of a headless man. Thanks to Antoinette King's photographs of the 1960s restoration, when she took each of the elements off, we know that the dark horizontal line that looks like the tie clip was originally just the end of a pipe. The pipe was lying on

the table, and then, as the image made itself clear, Gris decided to make this shape-shifter where the image became perceptually ambiguous, both a still life and a headless man with shoulders, triangular necktie, pocket, and pocket scarf. The whole pipe was underneath. Then Gris added a triangular piece of *papier collé*, which is a slightly different tonality than the rest, so now the pipe is tucked underneath the jacket.

EMILY BRAUN PRE-LAUDER

PK: Now, let's get personal. Your arrival was an important moment in the history of the collection. Leonard Lauder's first curator, Bonnie Clearwater, left, and in January 1987, Kirk Varnedoe introduced him to a graduate student. That was *you*. But you were not just an ordinary graduate student in 1987. Tell us about your previous work.

EB: As a student, I was fortunate to work for Barnabas McHenry, who was chief counsel to DeWitt and Lila Acheson Wallace and the Reader's Digest Association. The Lila Acheson Wallace Fund was incredibly generous under Barney McHenry's stewardship. My first task when I started working for Barney was to write labels for the Rockefeller University art collection, for which I received a personal note from David Rockefeller thanking me for the clarity of my labels. As a graduate student, that was thrilling. Later, Barney wanted to set up the President's National Medal of Arts. It was during the Reagan administration. Barney asked the sculptor Robert Graham to design the maquette for the medal. There were three maquettes; all nudes. I was sent at the young age of 26 to Washington to meet with Carter Brown, Director of the National Gallery of Art, and take these plaster medals to the White House to get feedback from the First Lady.

I never met Nancy Reagan, but I waited outside as the plaster medals were presented to her. When the intermediary returned, the message was, "Are they male nudes or female?"

PK: Hmm. With Robert Graham, it's not usually hard to tell.

EB: Barney persevered, and we now have the NEA's National Medal of Arts (designed by Robert Graham). Then he helped save the Thomas Hart Benton murals, *America Today,* for New York City. Barney had been approached by Mayor Koch's office and by Herb Rickman, who was then the city's cultural commissioner. It turned out that the French dealer who had bought the Benton murals from the New School in Manhattan could not sell them and was planning to break up the group to sell at auction. Barney was asked to find a way to keep the group intact and in New York. He took me along to visit several real estate developers to whom he offered extra air rights or other amenities in exchange for purchasing the murals. Eventually, the Equitable Life Insurance Company (now AXA) bought the murals and installed them in its new headquarters on Seventh Avenue between 52nd and 53rd.[9] Then we organized an exhibition around the murals at the Williamstown Conservation Lab, where visitors could see the conservators — led by Thomas Branchick — cleaning and restoring them. I was then hired by Equitable as curator. Pari Stave, who succeeded me, was important in bringing the murals two years ago to the Metropolitan Museum, where they are now on view.

PK: So, as I see it, you currently have two exhibitions on view at the Metropolitan!

Coming back to Leonard Lauder, when you then went to work for him, in addition to the experience we've just discussed, you also brought your knowledge of Cubist collectors. Some Lauder pictures came from people that you already knew.

EB: Yes. The Braque *Still Life on a Table: "Duo pour flute"* **(FIG. 21)** was in the Mattioli Collection.

FIGURE 21. GEORGES BRAQUE *Still Life on a Table: "Duo pour flute,"* 1913-14. Oil on canvas, 45.7 x 55.2 cm. Leonard A. Lauder Cubist Collection. Ph. Stinehour Photography. © 2015 ARS NY.

[9] The murals were later moved to a different AXA building on Sixth Avenue.

FIGURE 22. GEORGES BRAQUE, ***Violin and Sheet Music: "Petit Oiseau,"*** early 1913. Oil and charcoal on canvas, 71.1 x 52.1 cm. Leonard A. Lauder Cubist Collection. Ph. MMA. © 2015 ARS NY.

Laura Mattioli, founder of the Center for Italian Modern Art, has been a friend for a long time. She has a great collection of modern Italian art, and her father also collected early modern European art, so when Laura decided to sell this Braque, she approached me, and the work was shown to Leonard. *Petit Oiseau* **(FIG. 22),** also Braque, came from the Rita and Alex Hillman Collection, which had been a static collection since 1968 when Alex Hillman died. As a graduate student, I had begun to work for Rita cataloging her collection, and I took Leonard to see it one day. He set his eyes on this Braque and wrote Rita a letter saying, "Dear Rita, would you like to sell me your Braque?" This is the one time that his persuasive techniques did not work. She wrote back a lovely letter, saying thank you, Mr. Lauder, but that will be up to my heirs to decide. When this great lady died, her heirs contacted Leonard, and the picture was purchased.

PATIENCE

EB: It takes patience to build a great collection. Sometimes Leonard waited fifteen to twenty years for a picture. Sometimes he lost out on a work, but it came back to him. There's patience in two ways. One is to wait things out because a work is overpriced or because you don't have enough money at a certain point. Leonard did have regrets about some pictures that got away, although the regrets are few. But there's also the patience needed to pass up a good picture and wait for a great one, or the one that fills the gaps. On many occasions, there was a terrific picture but he already had two demonstrating the same idea and from the same year. He never had the mindset to purchase something just because there might not be another one. Moreover, if a picture didn't quite fit, he would think it through very carefully before proceeding.

PK: Another one of Leonard's maxims, taken from business and applied to art collecting, is that "Intelligent people let things happen." What does that mean for an art collector?

EB: The finest example of that was the decision regarding where this collection would go, a process that took about six years. In the 1990s — even earlier — Leonard decided that it would go to a museum. As he says, he collects not to possess but to conserve. He describes himself as a museum junkie; he loves museums. During the process of choosing the museums, his beloved late wife Evelyn got sick. As part of the process, he asked the museums what they would do with his collection, a situation they had not been in before. They were used to donors saying "I want this and this; these are my conditions." Leonard's question put them in a position of having to articulate their vision. It was a fascinating process, which also gave a sense of the institutional culture — and of the energy of the curators and the administrators behind them. He let things play out, and, in the course of those conversations, new ideas came up — even some that the institutions hadn't previously thought of before they were pushed to do so.

PK: We should underscore the extraordinary generosity and exceptional provisions of this donation. So often collectors make their own private museums or demand that a new wing of a museum be built exclusively for their work, or they restrict where works can be displayed, demanding monuments to their collections in perpetuity. Leonard didn't do any of that.

EB: No. He has always had the public good in mind. The private museums being started today are a wonderful thing. But we saw with the Barnes Collection how much money and collective activity it takes to keep a private museum going forever. In New York, we have several private museums — the Frick, the Cooper-Hewitt and the Morgan — but that is rare in the United States. It remains to be seen what will

happen, years from now, to the wonderful private museums being started today. Leonard's thinking was, instead, to add strength to strength. In giving his collection to a strong public institution like the Met, with extraordinary curators and conservation departments, its longevity is guaranteed.

PROVENANCE

PK: I'd like to return to the question of guidelines for the collection, particularly provenance. You and Leonard had an extraordinary awareness of the history of each picture — to whom it had belonged over the years — and that history has become part of the pictures, epitomized by the treatment of Braque's *Bottle of Rum* **(FIG. 23).** Perhaps you can discuss the label at the lower left.

FIGURE 23. GEORGES BRAQUE, *Bottle of Rum,* spring 1914. Oil on canvas, 46 x 54.9 cm. Leonard A. Lauder Cubist Collection. Ph. MMA. © 2015 ARS NY. Highlighted area lower left shows the blue auction sticker from the second Kahnweiler sale.

EB: The little blue label says number 19. You might think it's an element in a collage, but it's not. Technically, the work is an oil painting with a foreign fragment on it, which is the auction sticker, lot number 19, from the second Kahnweiler sale in the fall of 1921, the auction sales when Braque punched Léonce Rosenberg. The lot stickers were not usually put on the front of the pictures; indeed, this is the *only* instance I know of where the sticker is on the front. The painting had been in a private collection for years. We had a conversation about whether to remove the sticker, and decided not to, because it's part of the history of the picture and it's in the spirit of Cubism.

Provenance has become more of an issue over the years, as IFAR is aware. In the 1980s it was not. In light of restitution issues, Nazi theft, and coerced sales, gaps in provenance have become a concern, so we have become increasingly careful. The issue used to be provenance in regard to the pedigree of the picture. Now the question is where else that picture might have been and how did that important collector obtain it. In preparation for the catalogue, I told Leonard that we had to close the gaps on a few of the 78 objects. I was not overly concerned because we had been diligent all along, but even when a gap does not signal a potential problem, it is missing information that one wants to fill. He allowed me to hire a fantastic group of researchers, former students including Julia May Boddewyn, who has also worked for IFAR, Anna Jozefacka, and Luise Mahler. We worked very hard over the past two years tying up any loose ends, including — in some cases — finding new owners that had not been on any records. In our research, we were helped by dealers and foundations here and in Europe.

PK: Coming back to another important early collector, here are some pictures **(FIGS. 24A & B)** that

FIGURE 24A and **B.** Two works from Gertrude Stein's collection. **A (left): PABLO PICASSO, *Head of a Woman (Study for "Nude with Drapery")*,** 1907. Gouache and watercolor on tan wove paper, mounted to a panel, 31 x 24 cm. Ph. Stinehour Photography. © 2015 Estate of Pablo Picasso/ARS NY and **B (RIGHT): JUAN GRIS, *Flowers,*** 1914. Papier collé, 54.9 x 46 cm. (See also **FIG. 20.**) Ph. MMA. Both: Leonard A. Lauder Cubist Collection.

came from Gertrude Stein's collection. They don't have stickers on the front that say "a label is a label is a label," but how does it change the way we see them, to be aware that they were once hanging on the wall of 27 rue de Fleurus?

"In preparation for the catalogue, I told Leonard that we had to close the [provenance] gaps on a few of the 78 objects. He allowed me to hire a fantastic group of researchers …"

EB: It adds to the aura of the picture and deepens the history. I suppose there is also an element of validation. Let's be honest, if you think another great collector has owned a work, your own eye is validated.

PK: It makes me think of what Leo Steinberg said speaking about Robert Rauschenberg and Jasper Johns, that the eye is a part of the mind. We don't just react to things visually. Awareness of the history feeds into your pleasure and excitement about pictures. Picasso's *Chess* of 1911, one of the quintessential Analytic Cubist pictures, was originally in the Dutilleul Collection **(FIG. 25).**

EB: It is one of five Dutilleul-Masurel pictures in the Lauder Collection. I don't know if Cubism was all that Dutilleul could afford at that time, but Dutilleul was one of Kahnweiler's favorite clients. Kahnweiler loved him dearly.

PK: The "afford" issue may be for real. Someone once asked Dutilleul how he came to collect Picasso and Braque. He answered, "I couldn't afford Cézanne." He looked for the pictures that were the most like Cézanne.

FIGURE 26A and **B. A (left): PABLO PICASSO, *Student with a Newspaper,*** 1913-1914. Plaster, oil, Conté crayon, and sand on canvas, 73 x 59.7 cm. Leonard A. Lauder Cubist Collection. Ph. Stinehour Photography. © 2015 Estate of Pablo Picasso/ARS NY. **B (right):** The work shown hanging in the La Roche Collection.

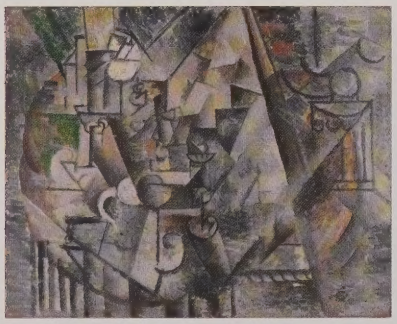


FIGURE 25A and **B. PABLO PICASSO, A (above): *Chess,*** autumn 1911. Oil on canvas, 33 x 41 cm. Leonard A. Lauder Cubist Collection. Ph. Stinehour Photography. © 2015 Estate of Pablo Picasso/ARS NY. **B (right):** Shown hanging in Roger Dutilleul's apartment.

The next pairing shows how Picasso's *Student with Newspaper* from 1913/14 looked hanging on the wall in La Roche's collection **(FIGS. 26A & B).**

EB: The La Roche Collection is famous for many reasons but, in particular, the fabulous Modernist pictures he donated to the Kunsthalle Basel. It's interesting to consider that collectors often have heirs to whom to leave the collection. So how do you strike the balance between wanting to donate pictures to a museum or give them to your children? La Roche gave quite a bit to the Kunsthalle Basel, but he also left works to his heirs, through whom some pictures came into the Lauder collection. Leonard has said publicly that he has

thanked his children because although they're part of the Leonard Lauder Cubist Trust, they did not object to the donation. Europeans are quite mystified by this decision.

PK: One of the most controversial and striking pictures in the collection, Picasso's *Woman in a Chemise in an Armchair* **(FIG. 27A)** from 1913/14, which was on the front page of the *New York Times* article announcing the Lauder gift **(FIG. 1),** was once in Reber's collection and then later belonged to the American collectors Victor and Sally Ganz. André Breton described it as the first Surrealist picture. It was a daring acquisition by Lauder, a difficult picture.

FIGURE 27A and **B. A (left): PABLO PICASSO, *Woman in a Chemise in an Armchair,*** 1913-14. Oil on canvas, 149.9 x 99.4 cm. Leonard A. Lauder Cubist Collection. Ph. MMA. © 2015 Estate of Pablo Picasso/ARS NY. **B (right): EVA HESSE, *Untitled, or Not Yet,*** 1966. Nine units: Nets, polyethylene, paper, sand, cord. 180 x 39 x 21 cm. © Estate of Eva Hesse, courtesy Hauser & Wirth. Ph. Ben Blackwell, courtesy SFMOMA.

EB: Yes, but the real owner of this picture for thirty years was Ingeborg Eichmann, who was Reber's mistress and was given or bought some works from him. Reber's wife hated the picture and said it gave her goose bumps. Evelyn Lauder was not a fan of this painting either, although she recognized that it was a masterpiece.

PK: The Ganzs were extraordinarily bold collectors who bought the late Picasso series, *Women of Algiers,* and went on to buy artists like Rauschenberg, Johns, and Eva Hesse. I've wondered whether there may be a link between their openness to sexual imagery in Picasso's paintings and the fact that they also purchased a sculpture by Eva Hesse **(FIG. 27B)** with strange and disturbing sexual imagery.

SURPRISES

EB: Some purchases were happy surprises. Picasso's *Old Oil Mill* **(FIG. 28),** once owned by Dutilleul, had been reproduced in the first volume of John Richardson's *Life of Picasso* (1991). We went to Basel to see a picture, and this was it. It was very exciting because this is a fantastic little painting, small format but incredibly powerful. Yet Leonard wasn't convinced. Year after year I went back and said, I think you should get this picture. Five years later, fortunately, it had still not been sold, and it was acquired then.

FIGURE 28. PABLO PICASSO, *The Oil Mill,* summer 1909. Oil on canvas, 38.1 x 45.7 cm. Leonard A. Lauder Cubist Collection. Ph. Stinehour Photography. © 2015 Estate of Pablo Picasso/ARS NY.

EB: The *Mozart Kubelick* by Braque **(FIG. 29)** was in the hands of the La Roche heirs in Switzerland. We were told to come to see two pictures, one by Braque, one by Picasso. The seller was anonymous and Leonard, too, wanted to remain anonymous — as if his face weren't well known. We went into a Swiss bank vault not knowing what the pictures were. They were just leaning against the wall. Leonard looked at *this* picture and said, "I have this postcard." The *Mozart Kubelick* had been in the Armory Show of 1913, which produced a set of black and white postcards of key pictures. Leonard had

FIGURE 29. GEORGES BRAQUE *Violin, Mozart Kubelick,* spring 1912. Oil on canvas, 45.7 x 61 cm. Leonard A. Lauder Cubist Collection. Ph. MMA. © 2015 ARS NY.

acquired the set years before. So, his first reaction to the picture was, "I have that postcard." Then he bought the painting and donated the archival postcard to the Met. He bought another postcard for Boston, so that both collections have it.

THE ONES THAT GOT AWAY

EB: There have been deacquisitions. Gris' *Guitar on a Chair* **(FIG. 30)** was one of them. It was a Cooper painting and one of Leonard's original purchases, but about five years after he purchased it, he sold it at auction to buy a Gris that he felt was better.

FIGURE 30. JUAN GRIS, *Guitar on a Chair,* 1913. Oil on canvas. Acq. by Leonard Lauder from the Cooper Coll. in 1986; later de-accessioned. Ph. Art Resource, NY.

Braque's *Homage to Bach* **(FIG. 31A),** now at the Museum of Modern Art and before then in the Sidney Janis Collection, was offered to Leonard, but he declined for certain reasons. Braque's *Fruit Dish* **(FIG. 31B)** was a picture that he did own but didn't love. Its date precedes the first *papier collé.* Here the wood grain is hand painted by Braque and has sand in it. It's an exquisite little piece from 1912, but for him it didn't "have everything," and he sold it.

PK: I know this is a tough question — but which is your *least* favorite painting?

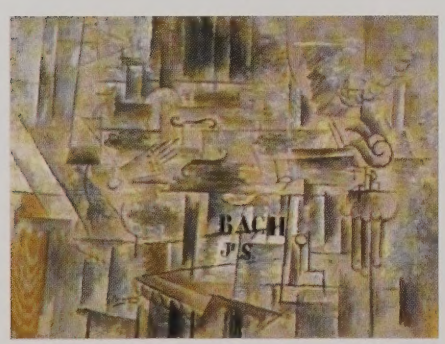


FIGURE 31A and **B. GEORGES BRAQUE, A (left): *Homage to J. S. Bach,*** winter 1911-12. Oil on canvas, 54 x 73 cm. Coll. Museum of Modern Art. **B (right): *Fruit Dish: Quotidien du Midi,*** 1912-13. De-accessioned by Leonard Lauder. Both: © 2015 ARS NY.

FIGURE 32. GEORGES BRAQUE, *Still Life: 2e Etude,* early 1914. Oil, charcoal and sand on canvas, 73.3 x 54 cm. Leonard A. Lauder Cubist Collection. Ph. MMA. © 2015 ARS NY.

EB: Braque's *Still Life: 2e Etude* **(FIG. 32)** is my least favorite painting. It's a fantastic work, but it doesn't "have everything" in my opinion. Braque is still resolving things. I don't like the way in which the oval squiggles within the rectangular frame, and the surface lacks Braque's elegant touch.

> "By 'four is better than two', Leonard means that the more you have together the more dialogues can ensue … Pictures *should* talk to each other."

LIVING WITH THE COLLECTION

PK: How do you and Leonard decide to hang the works? The photograph we saw of his living room **(FIG. 2)** shows a very dense hanging, different from anything you would see in a museum these days. Leonard has said, "Two are better than one, and four are better than two." From this picture, it looks like eight are better than four.

EB: Leonard is very particular about how he wants things put together, which is different from the hanging at the Met exhibition. In fact, when the show opened at the Met, his two sons told me that there were pictures that they had never seen before. I replied, "Yes, you have. They have just been hung in a different way." It's idiosyncratic — you have to hang where the living room wall panels are, for

FIGURE 33. Installation view of the Lauder apartment with a Picasso **(left)** and a Braque **(right)** hanging near each other. © 2015 MMA. Ph. Juan Trujillo.

example — but Leonard loves to see everything tight like this wherever possible. This is not without precedent, as we saw in the photo of Dutilleul's collection **(FIG. 25).** Leo and Gertrude Stein did this as well. By "four is better than two," Leonard means that the more you have together, the more dialogues can ensue … Pictures *should* talk to each other.

The Picasso and Braque on this wall **(FIGS. 33; 34A & B)** are from the same moment, when it is very hard to tell who painted what. There are reasons why certain canvases have to go together — historical reasons sometimes, formal reasons, or visual reasons.

PK: In conclusion, it seems to me unlikely that a new collector could possibly assemble a Cubist collection equal in quality to the Lauder Collection. I don't believe that the paintings are out there, even if a collector had the patience, the resources, and a great curator, as Leonard did. But are there other areas of modern art where one might form a comparable collection? If you were starting over again today, where would you start?

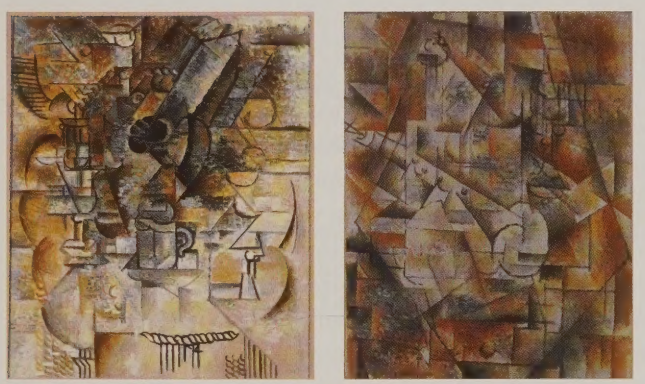


FIGURE 34A and **B. A (left): PABLO PICASSO,** ***Pedestal Table, Glasses, Cups, Mandolin,*** spring 1911. Oil on canvas, 61.6 x 49.5 cm. Ph. MMA. © 2015 Estate of Pablo Picasso/ARS NY. **B (right): GEORGES BRAQUE,** ***Still Life with Clarinet,*** summer-autumn 1911. Oil on canvas, 64.8 x 50.2 cm. Ph. MMA. © 2015 ARS NY. Both: Leonard A. Lauder Cubist Collection.

EB: That is an impossible question to answer with integrity because anyone who collects has to do so with his own eye and passion. You can have advice, and counsel, but you have to really know what you want to do and what you like. It may sound like a platitude, but it is really true. I have a dear friend who has a collection of Pez candy dispensers, which she's been collecting for forty-odd years. Every time I go to her house, I long for that collection and say to myself, "Why didn't I think of that?"

PK: That makes sense; find your inner Pez.

• • •

CONT. →

Q&A

Q: **SHARON FLESCHER (SF):** This is a conversation that I wish could go on much longer. But now, for other questions. To start, you said it was difficult to distinguish the Cubist Braque from the Picasso **(34A & B)** on Mr. Lauder's wall. How *can* one distinguish them?

EB: The compositions of Picasso's pictures tend to become denser towards the center; the number of forms increases towards the center. His use of shadow and black is more dramatic. The brushstroke varies in density; whereas Braque's brushstroke is lighter, and there tends to be a loss in shape. Moreover, often in Braque's work there is a kind of central, overall lighting.

PK: Another giveaway in this particular juxtaposition is the presence in **FIGURE 34A** of a rope-like form at the bottom center, with lines hanging down from it. That is actually the tablecloth covering a round pedestal table that Picasso owned. We see it in a lot of photographs of his studio. It's a kitschy little object he dearly loved, and, amazingly enough, the table is still in the family. It was in John Richardson's recent show at the Gagosian Gallery.[10] So, if you're stumped on style, that table with the fringe hanging down is a very good clue that the work is a Picasso.

EB: Musical instruments, too, because Braque painted far more and different types of musical instruments than did Picasso.

PK: John Richardson once said that he'd gotten it wrong when visiting a collector for dinner, and referred to a work as a Braque when it was really a Picasso, or vice versa. Apparently, this woman teased him for *years* afterwards.

Q: Thank you for a wonderful talk. Regarding the bronze of Fernande Olivier in the Met show, not so long ago I saw what was probably the *surmoulage* of that particular bronze. What do you consider to be the differences between the *surmoulage* and the first casting that is in the Lauder collection?

EB: As with any cast of a bronze that is already made, there are differences in the imprint. The mold is different; it's not from the original plaster or from the terracotta, so it will have a slight difference in surface, not necessarily visible to the untrained eye. There is ongoing research on that sculpture because people who thought they had an original cast — one of the first series of casts — often did not. Then, of course, there are differences in patina, because the foundries are different, although some foundries have been known to perpetuate the bronze cast with *surmoulages*.

PK: Sometimes — although I don't know that it's true in the case of this particular sculpture — the *surmoulage* is less crisp. The process of replication makes the edges softer and there's an indefinite sense about it. Also, it's usually a different size.

Q: One has the feeling that in Synthetic Cubism, and perhaps also in Analytic Cubism, Braque not only held his own but was ahead; that he started adding things to the canvas before Picasso did. But in a recent Braque retrospective, it was startling to see that Braque seemed to run out of steam and repeat himself over and over. Could you comment on that? Is it just that he didn't have Picasso's unending creativity?

EB: You're referring to the retrospective at the Grand Palais in Paris, which later travelled to Houston in a smaller version. I saw that.

There were different reactions to the exhibition. Some people were actually pleased by the later Braque of the '20s and '30s, but not the very late pictures. Braque is not the only member of the avant-garde whose work seems to retreat or become less innovative. He did, of course, go off to war,

10 "Picasso and the Camera," curated by John Richardson, Gagosian Gallery, West 21st Street, New York, October 28, 2014 — January 3, 2015.

which Picasso didn't. There were very few, in fact, no artists who managed to keep up the same level of innovation. Matisse has his weak period in the '20s, and Picasso has a lot of works that are not that good. His late work is still up for discussion. So there are moments of ups and downs. The Braque work of the 1930s is actually quite interesting in the context of the '30s, and, certainly, his work during the Occupation, his still lifes, I think can go *mano-a-mano* with Picasso's still lifes from that period.

PK: Even though I'm a Picasso scholar, I would speak up for Braque. Braque had a real genius for texture and overall design, and — as you were alluding to — he introduces the use of sand; he introduces lettering; he introduces the wood grain and other kinds of wallpaper; and he taught Picasso how to glue things so they wouldn't wrinkle, which is not easy to do.

That didn't go away, and there are other specific things he introduces later, like corrugated cardboard, beginning in 1914. Picasso and other artists imitate it right into the '50s. That comes from Braque. Furthermore, although this is a matter of personal taste, I think that some of those biomorphic, slightly formless still lifes that Braque did in the 1920s, around 1923, are just gorgeous. To me, they are among the supreme masterpieces of modern painting.

Q: You mentioned that it took two years to research gaps in the provenance. Did you find any gaps, and, if not, what would Leonard Lauder have done if you had?

EB: Research was ongoing, but once the decision was made to give the collection to the museum, we knew that those gaps that had been identified, had to be filled. So, to your question, were there any gaps that we could not fill, I think there were one or two, but not gaps that were problematic in any way.

PK: If there is a gap in the 1920s, if something was in the Kahnweiler sale and then shows up in a gallery in 1928, you're not worried about whether the Nazis had it. It's not the time period we really worry about.

EB: Many of Leonard's pictures had been out in the public realm for years, although that doesn't necessarily mean anything. We did, in fact, find an abundance of additional information that filled gaps — miniscule details, such as invoices, prices paid.

Now, what would Leonard do? Some years ago there was a restitution case against one of his Klimts that was widely publicized in the newspapers. A claim was made by the Zuckerkandl family. I remember that day very well, because Leonard told me that if this picture had been illegally taken, he would give it back right away. That was his immediate reaction. But he added that he had to have *evidence* of that. It was a specious case, which I happened to know for a couple of reasons. One was that the Zuckerkandl family was a subject of an exhibition I was working on for the Jewish Museum called "The Power of Conversation: Jewish Women and Their Salons," and one of the Salon women we focused on was Berthe Zuckerkandl. It was her brother-in-law who had amassed a collection of ten or twelve Klimts. When he died with no heirs in the 1920s, he distributed the collection to his nieces and nephews. It was a long and involved story. Leonard has often encouraged me to write a book about it, and in my retirement I will. His immediate reaction was, if there was any doubt, he would return the works. But there was no doubt. It was one of those situations, unfortunately, where someone was trying to force a settlement. We did a lot of research, and we gave the other side information as to the location of three pictures that they *were* looking for. One was in Salzburg; one was in a private collection in Graz, which they were already negotiating to get — those two pictures have since come up at auction at Sotheby's; and the third picture was in a public museum in Europe.

SF: This is a perfect point to end. Please join me in thanking our fabulous speakers, and then step across the hallway to our reception in this lovely Player's Club.

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SCENES FROM AN IFAR EVENING

Rachel Adler (left) and Barbara Mathes

Left to right: Sharon Flescher, IFAR's Executive Director, with Pepe Karmel and Emily Braun

Left to right: Nancy Harrison, Shary Grossman and Lisa Schiller

Left to right: Sasha Kalter-Wasserman, Carol Saper, Emily Braun, and Lawrence Saper

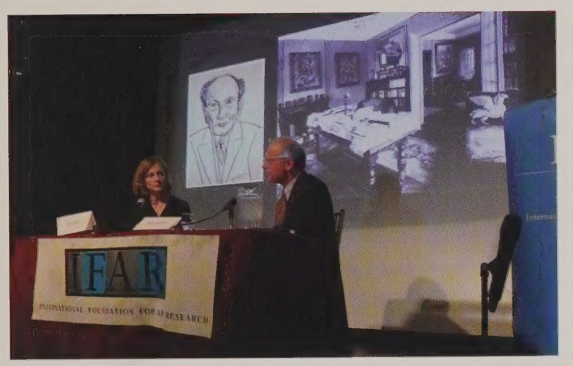
Kenneth Needleman and Sally Caswell

Antoinette and William Hoar

Eric R. Kandel and Denise Kandel

Credit for these photos and all other images of speakers and guests at this program: Steven Tucker.

A CONVERSATION WITH EMILY BRAUN AND PEPE KARMEL



Left to right: Mary Kate Cleary, Christel Force and Julia May-Boddewyn

Left to right: Mark Bench, Sabine Wilson and Elliot Roberts

Left to right: Jane Jacob, Sharon Flescher and Judith Gurland

Thomas Wertimer and Dorit Straus, IFAR Board Member

Left to right: Suzi Teo, Sarah Mohrman, Julia Plotkin, and Tara Keny

RESTITUTION ROULETTE: A COMPARISON OF U.S. AND EUROPEAN APPROACHES TO NAZI-ERA ART LOOTING CLAIMS

THOMAS R. KLINE*

In the United States, the film *Woman in Gold* and the discovery of the Gurlitt trove of well over a thousand works of art in Munich captured the imagination of the public as nothing has done in recent memory concerning restitution of Nazi-era looted art. Even well-educated Americans had been unacquainted with the full scope of Nazi art spoliation and had no basis for comprehending how theft on such a grand scale could have occurred, or how such a large cache of possibly looted artwork could still exist today. Nor could many Americans understand why, when found, the art would not immediately be restituted to victims of the Nazis from whom it was presumably stolen, thus raising questions about the fairness, efficiency and consistency of the resolution process. The public's desire to understand the complexities of Nazi art looting and post-War restitution has never been greater and this curiosity has brought with it increased scrutiny to current restitution efforts in Europe and the United States.

"With no end in sight to Nazi-era art looting claims, these problems cry out for attention and trans-national as well as national solutions."

Restitution claims have, if anything, grown in complexity in recent years and have become more difficult to resolve. Approaches on both sides of the Atlantic have led to uncertainty and unpredictable outcomes. Because the circumstances surrounding restitution and the governing law are so different in the United States and in Europe, however, any discussion of these issues needs to start with a comparison between them regarding Nazi-era art restitution.[1] Given the limitations of space and in the interest of clarity, the discussion will necessarily entail broad generalizations and must be, to some degree, superficial.

Significant factual and legal differences between Europe and the United States affect the handling of restitution claims, such as the absence of good faith purchaser rules in the United States and more stringent statutes of limitations in Europe. At the same time, national organizations in Europe have been more active in intervening in these cases and in developing special rules, particularly with regard to art held by government entities. American museum associations, which play some of the roles cultural ministries do in Europe, have, in my opinion, all but abandoned the field of Nazi-looted art claims. In the end, claimants, on the one hand, and museums and collectors, on the other, suffer from a lack of uniformity or consensus on standards for what facts provide the basis for a strong claim or defense,

* Thomas R. Kline is Of Counsel, Andrews Kurth LLP and Professorial Lecturer, George Washington University. This article is based on remarks given by the author at a conference on art restitution organized by the Polish Ministry of Culture and National Heritage and held on November 12-14 in Kraków, Poland entitled: "Looted-Recovered: Cultural Goods – The Case of Poland."

[1] In this article, I am not giving legal advice, merely providing a general overview of issues. I present here only my own views; I do not speak for any clients or organizations.

creating legal uncertainty and unpredictable outcomes. Museums, collectors and claimants also suffer from a shortage of resources for conducting the provenance research that is at the heart of addressing these claims. With no end in sight to Nazi-era art looting claims, these problems cry out for attention and trans-national as well as national solutions.

FACTUAL UNDERPINNINGS

Among the most significant factual differences between the U.S. and Europe are that European museums are, for the most part, government institutions; whereas in the U.S., museums are generally privately owned and operated. In fact, the U.S. federal government owns only the Smithsonian Institution and the National Gallery, although many U.S. museums are owned by state and local governments. The U.S. federal government has comparatively little authority or control over private, state and locally owned cultural institutions. European governments, on the other hand, have both greater authority and, generally, special cabinet offices (Ministries of Culture) dedicated to overseeing cultural institutions.

The 1998 Washington Conference on Holocaust-Era Assets and the resulting Washington Principles challenged signatory governments and museums in their countries to reexamine their collections for Nazi-looted art that was not restituted in the War's aftermath.[2] In response, European and American museums renewed their immediate post-War efforts to deal responsibly with art that may have been looted. European governments faced the problem of art returned to them by the Western Allies — often by "the Monuments Men"— that was not subsequently restituted to the original owners but was simply integrated into the national museum structure.

In Europe, addressing this problem typically required the passage of special legislation and the creation of administrative bodies to deal with potential claims for hundreds or even thousands of unrestituted pieces. For example, the Ekkart Committee in the Netherlands determined that the post-War Dutch restitution standards and procedures had left many artworks returned to The Netherlands in government hands that could possibly still be restituted if surviving claimants could be identified.[3] In response, the Dutch Government encouraged art restitution claimants to come forward and also set up the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War (generally known as the "Restitutions Committee") to evaluate such claims and to advise the Ministry for Education, Culture and Science on how to decide them.

> "Significant factual and legal differences between Europe and the United States affect the handling of restitution claims, such as the absence of good faith purchaser rules in the United States and more stringent statutes of limitations in Europe."

Other European countries have established special legal standards and procedures for handling claims of Nazi-era art looting; created commissions to hear such claims outside of the normal legal system; and provided museums with assistance in conducting provenance research.[4] France, for example, established the "Commission for the Compensation of Victims of Spoliation resulting from the anti-Semitic legislation in force during the Occupation," which has heard 877 disputes involving Nazi-era artworks (although only two disputes resulted in physical restitution of the art).[5] Germany created the Limbach Advisory Commission (*"Beratenden Kommission"*) to review

2 U.S. Dept. of State Bureau of European and Eurasian Affairs, "Washington Conference Principles on Nazi-Confiscated Art" (1998) http://www.state.gov/p/eur/rt/hlcst/122038.htm (accessed 7 March 2015).

3 The Ekkart Committee, "Origins Unknown Advisory Committee Final Recommendations" (2004) http://www.herkomstgezocht.nl/eng/rapportage/content.html (accessed 8 March 2015).

4 See Evelien Campfens, "Impression of the Symposium 'Fair and Just Solutions'" (Dec. 3, 2012) http://www.restitutiecommissie.nl/en/impression_of_the_symposium_fair_and_just_solutions.html (accessed 14 November 2014).

5 *Id.*

and make recommendations in cases involving museums, libraries, archives and other public institutions, provided both parties to a dispute agree to the review.[6] Austria created a Provenance Research Commission and also changed the applicable law to facilitate return of art looted during the Nazi era.[7]

"We have seen no such developments in the U.S. In fact, at a recent conference in the Hague ..., [the] then U.S. Special Envoy for Holocaust Issues ... made clear that the State Department would not be creating any kind of U.S. Commission to deal with Nazi-era art looting claims."

We have seen no such developments in the U.S. In fact, at a recent conference in The Hague hosted by the Dutch Ministry of Education, Culture and Science, then-U.S. Special Envoy for Holocaust Issues, Ambassador Douglas Davidson, made clear that the State Department would not be creating any kind of U.S. Commission to deal with Nazi-era art looting claims.[8] The decision may flow naturally from the fact that the U.S. did not suffer Nazi occupation and art looting, and has no museum collections of looted art returned to the government after the end of the War. Based on official government action, in fact, we have only stray pieces from Europe, such as the remainder of 8,000 artworks considered Nazi propaganda seized by the U.S. Army at the end of the War and constituted as the Defense Department's War Art Collection (much of it since returned); as well as a manuscript from 1236 A.D. on vellum, a document from East Prussia whose ownership is disputed between Germany and Poland, with no end in sight to Library of Congress custody.[9] Because of the absence of a national collection built on Nazi loot, no thoroughgoing re-structuring of the legal system was thought necessary. Nonetheless, through purchases (and in the case of museums, donations) and lack of diligence concerning provenance, American museums and collectors received and possess many works of art that may have changed hands in Europe during the Nazi era.

To address this problem, however, the U.S. has no Ministry of Culture, as do most European countries, and thus, no central government authority for funding, administration, policy-making or oversight of cultural institutions. Most financial support for privately owned museums comes from private donors, including foundations, while state and local governments provide financial support for the museums they own. Each museum sets its own policies and practices guided by the ethical standards set by two major museum associations: the American Alliance of Museums (AAM) and the Association of Art Museum Directors (AAMD). It fell to these associations to encourage U.S. museums to comply voluntarily with the Washington Principles.

In this regard, around 1998, consistent with the Washington Principles' call for museums "expeditiously to achieve a just and fair solution, recognizing this may vary according to facts and circumstances surrounding a specific case,"[10] AAM and AAMD established museum guidelines setting out

6 Advisory Commission, LostArt.de http://www.lostart.de/Webs/EN/Kommission/Index.html (accessed 8 March 2015). Several federal German agencies and offices, including the Prussian Cultural Heritage Foundation, the Cultural Foundation of the States, the Office for Provenance Research, the Minister of State in the Federal Chancellery and the Representative for Cultural and Media Affairs, have combined efforts to support and conduct provenance research of art with a suspect Nazi era history. See Provenance Research in Germany: Recent Results and Future Outlook, Kulturpolitsche Themen, http://www.kulturstiftung.de/aufgaben/kulturpolitische-themen/ns-verfolgungsbedingt-entzogenes-kulturgut/provenance-research-in-germany-recent-results-and-future-outlook/ (accessed 8 March 2015).

7 Commission for Provenance Research, http://www.provenienzforschung.gv.at/index.aspx?ID=1&LID=2 (accessed 8 March 2015).

8 Catherine Hickley, "Nazi-Loot Panel Hopes Fade in U.S., Forcing Court Action," Bloomberg News (Nov. 28, 2012), http://www.bloomberg.com/news/2012-11-29/nazi-loot-panel-hopes-fade-in-u-s-forcing-court-action.html (accessed 14 November 2014).

9 See Interagency Working Group, Records of the Office of the Assistant Legal Advisor for Educational, Cultural, and Public Affairs 1945-1997 (Record Group 59), http://www.archives.gov/iwg/declassified-records/rg-59-state-department/rg-059-general-records-2.htm (accessed 14 November 2014).

10 U.S. Dept. of State Bureau of European and Eurasian Affairs, "Washington Conference Principles on Nazi-Confiscated Art" (1998) http://www.state.gov/p/eur/rt/hlcst/122038.htm (accessed 7 March 2015).

best practices for documenting and publicizing objects that may have been the subject of Nazi confiscation and for responding to claims.[11] At the same time, the AAM established an Internet portal that families of theft victims and their researchers could use to locate artworks that may have changed hands in Europe during the Nazi era.[12] It is generally understood and accepted that the guidelines do not create legal obligations or establish mandatory rules for museums to follow, but rather are intended to "facilitate the ability of museums to act ethically and legally as stewards" through "serious efforts" on a "case by case basis."[13] The Washington Principles, which provide the background for the guidelines, do, however, at least in the view of one federal Court of Appeals, embody the policy of the U.S. government with regard to restitution of art potentially looted by the Nazis.[14] Nonetheless, the extent to which AAM and AAMD are continuing to encourage American museums to abide by the guidelines and to provide them with needed support, and to provide the public with transparent accounting for museum practices in this regard has become a controversial subject that will be discussed below.

VASTLY DIFFERENT LEGAL LANDSCAPES

There are also significant legal differences between the United States and continental Europe that impact restitution, bearing in mind that we are again speaking in broad generalities. In the United States, property law is a local — not federal — matter and most cases are resolved on the basis of state law,[15] whereas claims in European countries are generally governed by national law. Thus, restitution claims in the U.S. are decided under state law that varies, sometimes widely, from jurisdiction to jurisdiction; while in Europe there is more uniformity because each country's national law applies.

One very significant difference between American and European law is the availability of a good faith purchaser defense in several European countries, which can create title in someone who purchases an item for value without notice of the true owner's claim to the property. In some cases, the good faith purchaser's title even becomes incontestable after a period of years.[16] The dominant rule in U.S. restitution cases, on the other hand, is that a thief does not acquire and cannot pass good title to stolen property.[17] Nor can one who obtains artwork from a thief — even if acquired in utmost good faith — receive title to the object or pass good title to a subsequent purchaser.[18] Hence, a good faith purchaser is protected from claims brought by original owners — to some extent — under European law, but is vulnerable under U.S. law.

Litigants have made the argument that a good faith purchase in Europe should be respected in

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11 American Alliance of Museums, Standards Regarding the Unlawful Appropriation of Objects During the Nazi Era, http://www.aam-us.org/resources/ethics-standards-and-best-practices/collections-stewardship/objects-during-the-nazi-era (accessed 14 November 2014); Association of Art Museum Directors, Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945)(June 4, 1998) https://aamd.org/standards-and-practices (accessed 7 March 2015).

12 See American Alliance of Museums, The Nazi Era Provenance Internet Portal Project, http://www.nepip.org/ (accessed 8 March 2015).

13 *Toledo Museum of Art v. Ullin,* 477 F.Supp.2d 802, 808 (N.D. Ohio 2006) (discussing the non-binding nature of the guidelines and holding that use of the Internet portal does not constitute a waiver of any rights to any Nazi-era paintings museum may own).

14 *Von Saher v. Norton Simon Museum of Art at Pasadena,* 754 F.3d 712, 720-721 (9th Cir. 2014), *cert. denied,* 135 S.Ct. 1158 (Jan. 20, 2015).

15 *Von Saher v. Norton Simon Museum of Art at Pasadena,* 592 F.3d 954, 969 (9th Cir. 2010) (explaining that state law applied to the ownership dispute between private parties regardless of non-binding U.S. federal policy concerning Nazi-era art and restitution).

16 See Deborah A. DeMott, "Artful Good Faith: An Essay on Law, Custom, and Intermediaries in Art Markets," in: *Duke Law Journal* (2012) pp. 607-643, here 632 (noting that under French law, a good faith purchaser acquires title after five years and under Swiss law, a good faith purchaser also acquires title after five years).

17 *Bakalar v. Vavra,* 619 F.3d 136, 140 (2d Cir. 2010); *Menzel v. List,* 267 N.Y.S.2d 804, 819 (Sup. Ct. 1966), *modified on other grounds,* 279 N.Y.S.2d 608 (1967), *mod. rev'd,* 298 N.Y.S.2d 979 (1969); *see also* Robin Morris Collin, "The Law and Stolen Art, Artifacts, and Antiquities," in: *Harvard Law Journal* 36 (1993) pp. 17- 44, here 22 ("Common law jurisdictions [like the United States] … follow the principle *nemo dat quod non habet.* Thus, no one who traces title through a thief may defeat the ownership claims of the rightful owner in an action for replevin.")

18 See *Bakalar,* 619 F.3d at 140 ("[A]bsent other considerations an artwork stolen during World War II still belongs to the original owner, even if there have been several subsequent buyers and even if each of those buyers was completely unaware that she was buying stolen goods.").

the U.S. under choice of law principles, but that defense has mostly failed. In *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.*, the U.S. Court of Appeals for the Seventh Circuit upheld the trial court's decision to apply Indiana law, as opposed to Swiss law, in a suit to recover mosaics stolen from a Greek-Orthodox Church in the Turkish-occupied area of Cyprus.[19] The court noted that although Switzerland was the place where the conversion of the mosaics took place because the buyer acquired them there, Switzerland's contacts with the case were too attenuated to justify the application of Swiss law.[20] Since the defendants were Indiana residents, the purchase money came from Indiana bank accounts, and the mosaics were promptly shipped to Indianapolis, Indiana law applied and the defendants could not rely on the Swiss good faith purchaser rule to provide title. Relying on *Cyprus v. Goldberg,* U.S. courts have mostly refused to apply the European good faith purchaser rule in analyzing Nazi-era art looting claims primarily because an analysis of competing interests generally points to the forum as the jurisdiction with the greater interest in the outcome of the case as compared to the jurisdiction where the sale took place.[21]

STATUTES OF LIMITATIONS

Although statute of limitations periods, which bar plaintiffs from bringing untimely claims, are much shorter in the U.S. (three to six years) as compared to the longer European limitations periods, several limited exceptions can allow claims to remain alive today. For example, New York applies a "demand and refusal rule," under which the statute of limitations does not begin to run against a good faith possessor until the true owner has demanded her property and the wrongful possessor refuses to return it.[22] Other states, like California, have variations of "the discovery rule," which delays commencement of the limitations period until the owner discovers or should have discovered that her property was stolen.[23]

In the U.S., the doctrine of laches may also bar a claim on timeliness grounds. If the court believes the claimant delayed unreasonably in making the claim and that delay caused prejudice to the current possessor, the court can apply this equitable defense to deny an otherwise viable ownership claim.[24] Passage of time alone, even a long period, is insufficient to support a laches defense; the party raising the defense must prove it has been prejudiced by the delay. As one court articulated, "proving prejudice requires more than the frenzied brandishing of a cardboard sword; it requires at least a hint of what witnesses or evidence a timeous investigation might have yielded."[25]

In a case involving Edgar Degas' *Landscape with Smokestacks* **(FIG. 1),** a court refused to apply laches to dismiss a case without a full exploration of the facts at a trial on the merits.[26] It was the first case in the United States in decades in which the court said that a claim based on Nazi-era art looting could still be alive in the mid-1990s, in spite of the passage of roughly 50 years since the end of the War. The parties settled the dispute after the court ruled that the case could go forward to

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19 917 F.2d 278, 286 (7th Cir. 1990).

20 *Id.* at 287.

21 See *Schoeps v. Museum of Modern Art,* 594 F. Supp. 2d 461, 466 (S.D.N.Y. 2009) (Even though the painting at issue was purchased in Switzerland, New York law governed the museum's good faith purchaser defense because, among other reasons, the disputed painting was immediately transported to New York after the sale, had been in New York for over 70 years, and had become the property of a major New York cultural institution that was also a party to the action.). Likewise, in *Bakalar v. Vavra,* 619 F.3d 136, 142-146 (2d Cir. 2010), the Court of Appeals conducted an interest analysis under New York choice of law rules and — reversing the trial court — held that New York law governed a sale that took place in Switzerland primarily because of New York's greater interest "in preventing the state from becoming a marketplace for stolen goods." *Id.* at 146 (citation omitted.).

22 *Solomon R. Guggenheim Found. v. Lubell,* 569 N.E.2d 426, 77 NY.2d 311, 318 (N.Y. 1991).

23 *Von Saher v. Norton Simon Museum of Art at Pasadena,* 592 F.3d 954, 969 (9th Cir. 2010).

24 *Vineberg v. Bissonnette,* 529 F. Supp. 2d 300, 309 (D.R.I. 2007), aff'd, 548 F.3d 50 (1st Cir. 2008).

25 *Vineberg v. Bissonette,* 548 F.3d 50, 58 (1st Cir. 2008).

26 See Barbara J. Tyler, "The Stolen Museum: Have United States Art Museums Become Inadvertent Fences for Stolen Art Works Looted by the Nazis in World War II?," *Rutgers Law Journal* 30 (1999) pp. 441-471, here 454.

trial.[27] The case stands as a reminder that laches is not necessarily a strong defense in seemingly old restitution cases, since the laches defense requires close scrutiny of the facts, and cases are rarely dismissed on this grounds before trial; at trial, the current possessor carries the burden of proof to establish that he was harmed by unreasonable delay on the part of the claimant.

FIGURE 1. EDGAR DEGAS. ***Landscape with Smokestacks,*** 1890. Monotype pastel. Art Institute of Chicago, purchased from the collection of Friedrich and Louise Gutmann, and gift of Daniel C. Searle.

Another important difference between U.S. and European legal systems is the ease or difficulty required for a claimant to hire an attorney to take on a Nazi-era art restitution case. In some European countries, the losing party pays the attorneys' fees of the prevailing party and attorneys representing the claimant are forbidden from earning a fee that is contingent on the outcome of the case. These rules can make it harder for a claimant who is not wealthy to sue a museum or collector because of the actual and potential financial costs. (Of course, in a loser-pays jurisdiction, a current possessor may be encouraged to settle a potentially meritorious case promptly, to avoid the risk of losing the object *and* paying the claimant's attorney's fees.)

In the U.S., on the other hand, a claimant can bring a case if he or she can find a lawyer willing to take a risk. Additionally, as long as the case is not frivolous, the claimant is generally not at risk of having to pay the possessor's fees, even if the claim fails. Further, attorneys may take a case on a contingency fee basis with hopes of a potentially large reward for success. In sum, obtaining representation for a Nazi-era art restitution claimant would appear to be substantially easier in the U.S. than in Europe.

For these reasons, particularly differences in statutes of limitations, restitution litigation based on claims of Nazi-era looting is a greater threat in the U.S. Some observers believe that a Nazi-era art looting claim will not settle unless the claimant has a credible threat of litigation. To foster fairness, some European countries — but not the U.S. — have created special commissions to address claims. These commissions generally have jurisdiction only over government-owned property, not artwork found in private hands.

LEGAL DEVELOPMENTS

Recent developments in U.S. restitution cases include:

- the rejection of the good faith purchaser defense based on choice of law principles,
- the limited availability of the "forced sale" argument,
- the growth of time-based limitations defenses, both statute of limitations and laches; and
- the use of statutory relief, like the National Stolen Property Act, which allows the federal government to bring a forfeiture action.

The good faith purchaser defense has been greatly weakened in the United States by the case of *Bakalar v. Vavra,* in which the court rejected this defense with regard to an Egon Schiele drawing **(FIG. 2)** that had originally changed hands in Switzerland.[28] The court felt that New York

FIGURE 2. EGON SCHIELE. ***Seated Woman with Bent Left Leg (Torso),*** 1917. Gouache and black crayon. The subject of a long and unsuccessful ownership claim against David Bakalar.

[27] See CNN, "Case over painting stolen by Nazis settled" (August 14, 1998), www.cnn.com/US/9808/14/looted.art/ (accessed 14 November 2014). See also Sharon Flescher, "Amicable Settlement in Dispute Over Degas Monotype Pastel," *IFAR Journal,* Vol. 1, no. 3, Autumn 1998, p. 7.

[28] 619 F.3d 136, 141 (2d Cir. 2010).

State had a greater interest than Switzerland in having its laws applied, particularly New York's rule that a thief cannot pass title to a good faith purchaser.[29] As a court in a different case eloquently stated, the American policy behind the rule is that it "gives greater protection to an object's true owner than to its good-faith purchaser, because doing otherwise would encourage illicit trafficking in stolen art."[30]

The basic U.S. rule in replevin or recovery cases is that the claimant's proof of ownership and theft establishes wrongful possession by the holder. There have been very few U.S. cases in which the claimant sought to establish theft through a so-called "forced sale" compelled by the Nazis. One, however, was *Vineberg v. Bissonnette,* in which the court ruled that the Nazis had "stolen" the painting *Girl from the Sabine Mountains* because it was part of the gallery stock of a Jewish dealer in Germany — Max Stern — who had been ordered to sell off his inventory.[31] In another "forced sale" case, a court ruled that a jury *could* possibly find — based on the meager evidence presented and informed by the historical realities of Nazi-era Germany — that a transfer of two Picassos was made under duress and therefore void.[32] The court allowed the case to go forward, reasoning that a jury might find that the owner of the paintings gifted them to his wife, who was considered "Aryan" under German law, because of threats and economic pressure he allegedly faced from the Nazi government.[33] The case settled, however, before trial. Although "forced sale" claims may possibly work in some U.S. courts, it is not a commonly-successful litigation avenue.

Even with mitigating doctrines under U.S. law, issues related to the passage of time, statute of limitations and the related doctrine of laches (delay by claimant causing prejudice to possessor) are the predominant issues seen in Nazi-era art restitution claims. Passage of time and the resulting prejudice (i.e., laches) was the basis for the ultimate decision against the claimant in *Bakalar*[34] and also in a lawsuit brought by the Museum of Fine Arts, Boston, against a claimant concerning Kokoschka's painting *Two Nudes.*[35] In this case, like several others we have seen in the United States, the museum believed the claim of Nazi-era looting was weak, but the court, while appearing to agree with the museum on this point, nonetheless ruled in the museum's favor *only* on the basis of statute of limitations.

Another time-related issue is the doctrine of adverse or prescriptive possession. Under this doctrine, after a period of years, a person who has wrongfully possessed property openly and notoriously may acquire good title to the property. In the U.S., the doctrine has been traditionally limited to land ownership disputes, but some courts have been willing to apply it to art ownership disputes.[36] In a case from New Orleans, the court found that the possessor of a 1910 painting by Oskar Kokoschka acquired title by acquisitive prescription under Louisiana state law by virtue of openly and continuously possessing the painting for well over ten years.[37] The court did not find it controlling that the original owner allegedly sold the painting under duress during the Nazi era.[38]

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29 *Id.* at 144-145 ("The tenuous interest of Switzerland … must yield to the significantly greater interest of New York … in preventing the state from becoming a marketplace for stolen goods.").

30 *Sotheby's Inc. v. Shene,* No. 04 Civ. 10067(TPG), 2009 WL 762697 (S.D.N.Y. March 23, 2009).

31 529 F. Supp. 2d 300, 307-08 (D.R.I. 2009), *aff'd,* 548 F.3d 50 (1st Cir. 2008).

32 *Schoeps v. Museum of Modern Art,* 594 F. Supp. 2d 461, 466 (S.D.N.Y. 2009).

33 *Id.*

34 *Bakalar v. Vavra,* 819 F. Supp. 2d 293, 305 (S.D.N.Y. 2011).

35 *Museum of Fine Arts, Boston v. Seger-Thomschitz,* 623 F.3d 1, 8 (1st Cir. 2010).

36 *Dunbar v. Seger-Thomschitz,* 638 F. Supp. 2d 659, 663 (E.D. La. 2009), *aff'd,* 615 F.3d 574 (5th Cir. 2010) (applying Louisiana law); *but see O'Keeffe v. Snyder,* 83 N.J. 478, 497, 416 A.2d 862, 872 (1980) (holding that the statutes of limitation and the application of the discovery rule were more appropriate in determining ownership, rather than the doctrine of adverse possession).

37 *Dunbar,* 638 F. Supp. 2d at 662-663. Louisiana state law is based on the Napoleonic Code, not Anglo-American common law, making it unique in this regard.

38 *Id.*

One U.S. federal law that particularly deserves mention with regard to recovering Nazi-era looted artwork is the National Stolen Property Act, under which the federal government can seize and forfeit stolen artwork worth more than $5,000 that moves across state lines for purpose of sale.[39] Even possession can be challenged. The United States Department of Homeland Security used this law to seize and return to Poland two hunting scenes by Julian Fałat.[40] I briefly assisted the Polish Ministry of Culture and Heritage in trying to settle these cases. In both, the possessors refused to enter into a reasonable compromise settlement agreement; in one case even refusing to speak with us. After a long period of frustration, the Ministry approached the U.S. Department of Homeland Security, which seized both paintings and returned them to Poland, leaving the possessors with nothing.

SOFT LAW

At a Prague conference in 2009, 46 countries reaffirmed the Washington Principles in adopting the Terezin Declaration, which renewed the call on governments and museums to "facilitate just and fair solutions with regard to Nazi confiscated and looted art."[41] We sometimes refer to the Washington Principles and the Terezin Declaration as soft law because the signatory countries agreed not to enact the provisions into positive law, but rather intended that these statements would encourage museums and others to apply the doctrines, particularly to publicize items that could have changed hands during the Nazi era and to pursue "just and fair" solutions to claims based on Nazi-era looting. In the U.S., these principles are honored in negotiations according to the good will of the participants, but doing so is viewed as voluntary and the principles generally have little or no role in the decision of court cases. We like to think that museums, and perhaps even private owners, will only assert defenses based on the passage of time when they believe the claim of Nazi-era looting is weak and will not do so when they believe the claim is well founded, but this is not always the case. At least one prominent museum attorney, general counsel to The J. Paul Getty Trust, argues that museums should utilize statutes of limitations and laches defenses because they are "designed to stabilize property rights and encourage resolution of claims when evidence and witnesses are more readily available."[42]

> "Litigants have made the argument that a good faith purchase in Europe should be respected in the U.S. under choice of law principles, but that defense has mostly failed."

UNCERTAINTY ABOUNDS

Here is my own, highly subjective status report on restitution matters in the United States. Although there have been complaints by claimants' representatives,[43] I find it difficult to see any distinctive pattern in the decided cases; each case has different facts and there are variations in the controlling state law. Nonetheless, claimants' representatives complain that the courts are favoring the holders, particularly because several cases have been decided against the claimants on the basis of timeliness: statute of limitations or laches. Museums see no such pattern. From my own experience, I see no pattern with regard to rulings on statutes of limitations or laches and can say that the courts considering *Girl from the Sabine Mountains* were open-minded in considering an unprecedented claim (unprecedented at least in the U.S.) of theft based on a forced sale.

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39 18 U.S.C. § 2314-2315.

40 *United States v. One Julian Falat Painting Entitled "Off to the Hunt" and One Julian Falat Painting Entitled "The Hunt,"* Civil Action No. 10 Civ 9291 *filed* Dec. 13, 2010; 18 U.S.C.A. § 2314 (2013); Jennifer Anglim Kreder, "Executive Weapons to Combat Infection of the Art Marker," *Washington University Law Review* 88(2011) pp. 1353-1365, here 1356.

41 Terezin Declaration, June 30, 2009. http://www.state.gov/p/eur/rls/or/126162.htm (accessed 24 April 2015).

42 Stephen W. Clark, "Nazi Era Claims and Art Museums: The American Perspective," *Collections: A Journal for Museum and Archives Professionals,* Vol. 10, no. 3, Summer 2014, pp. 349, 353.

43 See, *e.g.*, Jennifer Anglim Kreder, Essay, *Guarding the Historical Record from the Nazi-Era Art Litigation Tumbling Toward the Supreme Court,* 159 U. PA. L. REV. PENNUMBRA 253 (2011), http:// www.pennumbra.com/essays/04-2011/Kreder.pdf.

The two American museum associations (AAM and AAMD) appear to have turned their attention to other issues and abandoned the field of Nazi-era art looting. Standards for museums have not been clarified or updated since 2001,[44] and financial resources for provenance research have not been provided to museums that need the assistance.[45] The Nazi-Era Provenance Internet Portal (www.nepip.org) created by the AAM has been allowed to become outdated.

"... it is not surprising that we see a wide variety of approaches and resolutions. ... The current situation can be called restitution roulette."

As a result, although some of the largest, most prominent and wealthiest museums have been able to make a sincere effort, for example by digitizing records concerning their collections and posting them online,[46] the same cannot be said of the smaller and medium sized-museums. The art market follows a similar pattern. It was reported some time ago that only Sotheby's, Christie's and the Dorotheum in Vienna take issues of Nazi-era art looting with sufficient seriousness.[47] The same can still be said today. In 2014, a smaller auction house in the U.S. listed for sale papers and photographs of a Holocaust survivor, apparently having failed to check the material with the family. When challenged, the auction house withdrew the material from sale and the balance of the story remains as yet unfinished.[48]

Private owners and claimants, as well, have not followed any particular pattern with regard to claims and settlements. Both are free to be as unreasonable as they want, at their own peril. The primary risk for each is, of course, loss of the object, perhaps coupled with negative publicity. Private negotiations and settlements are generally unpublicized, unless the settlement is revealed through an auction sale or public restitution.

RESTITUTION ROULETTE

When we take into account the multitude of laws governing Nazi-era art restitution in the U.S. and the lack of any meaningful centralized guidance or leadership concerning claims, it is not surprising that we see a wide variety of approaches and resolutions. If we then include the variety of laws in European countries and the way they differ from those in the U.S., we move from a patchwork of approaches to a crazy quilt. The current situation can be called restitution roulette because the likely outcome of a claim depends on so many factors other than whether the object was looted by the Nazis. Perhaps in a decentralized democracy some variation in approaches would be expected, however, the current situation is daunting for claimants and possessors alike.

But my own view is that we in the United States would benefit from clearer and more uniform standards for Nazi-era art looting claims to help us approach negotiations and settlements in a well-informed way. We need better mechanisms and resources for collecting information on claims, so many of which never come to court. Is it too much to hope that AAM and AAMD might play a role in this?

• • •

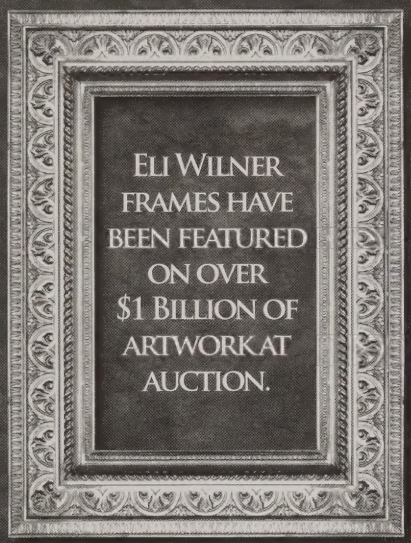
44 In 2001, AAM revised its 1998 Nazi-Era Provenance guidelines (http://www.aam-us.org/resources/ethics-standards-and-best-practices/collections-stewardship/objects-during-the-nazi-era). Also in 2001, AAMD supplemented its guidelines, adding a one-sentence Addendum: "It should be the goal of member museums to make full disclosure of the results of their ongoing provenance research on those works of art in their collections created before 1946, transferred after 1932 and before 1946, and which were or could have been in continental Europe during that period, giving priority to European paintings and Judaica." (https://aamd.org/standards-and-practices.) AAMD also issued a position paper in 2007. (https://aamd.org/sites/default/files/document/Nazi-looted%20art_clean_06_2007.pdf.) In spite of these efforts and AAMD's 2001 Addendum, neither AAM nor AAMD has provided for comprehensive accounting by museums or for systematic reporting to the public on museum compliance with guidelines, although the AAMD has recently made some efforts in this regard, including creating an object registry of resolved claims. (https://aamd.org/object-registry/resolution-of-claims-for-nazi-era-cultural-assets/browse.)

45 AAM and AAMD also need to find ways to provide greater financial support for provenance research at small and medium sized museums. While some efforts are underway to train the next generation of provenance researchers, American museums need resources to hire researchers to study their collections, publicize the results and respond to claims.

46 "The American Art Collaborative (AAC) is a consortium of 14 museums in the U.S. committed to establishing a critical mass of LOD [Linked Open Data] on the subject of American Art."

47 Yael I. Friedman, "The Road to Restitution," *ArtInfo, Financial Times,* http://www.blouinartinfo.com/news/story/31924/the-road-to-restitution (accessed 24 April 2014).

48 Jennifer Schuessler, "Survivor Who Hated the Spotlight," *The New York Times* (Nov. 10, 2014) http://www.nytimes.com/2014/11/11/arts/survivor-who-hated-the-spotlight.html (accessed 7 March 2015).



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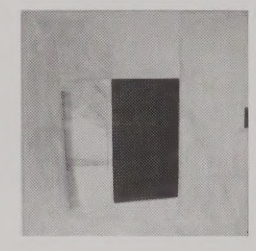
STOLEN ART*

PAINTINGS

91. **NINI BJONNESS** (American, born 1940). ***Painting No. 618,*** 2007. Acrylic on canvas. 100 x 100 cm (approx. 39 ⅜" x 39 ⅜"). *L15.353. Stolen in Oslo, Norway on November 27, 2013.



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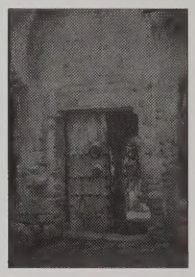
92. **FREDERICK ARTHUR BRIDGMAN** (American, 1847-1928). ***Old Doorway, Constantinople,*** 1879. Oil on canvas on board. 32.99 x 22.5 cm (approx. 13" x 8 ¾"). Signed and dated l/l. *L15.404. Stolen from a gallery in London, England on August 24, 2011.



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93. **HARRY BRITTON** (Canadian, 1878-1958). ***Untitled Landscape.*** Oil on canvas. 23 x 31 cm (approx. 9" x 12"). Signed on verso. *L15.487. Stolen from the University of Toronto in Canada on May 18, 2014.

93

94. **CHARLES LIVINGSTON BULL** (American, 1874-1932). ***Collie Chasing a Bull,*** 1945. Oil on canvas. 60.96 x 91.44 cm (24" x 36"). *L15.258. Stolen in transit between Montoursville, PA and Melbourne, FL on February 24, 2015.

94

95. **MAX CLARENBACH** (German, 1880-1952). ***Picture,*** 1940. oil on canvas. 45.01 x 70 cm (approx. 17 ¾" x 27 ½"). *L15.368. Stolen in Erkrath, Germany on April 2, 2015.

95

96. **MARC CORBETT** (contemporary). ***Run,*** 2009. Acrylic on canvas. 50.11 x 56.74 cm (approx. 19 ¾" x 22 ¼"). *L15.354. Stolen from a service station in Cherry Hill, NJ on June 24, 2014.

96

97. **WILLIAM A. COULTER** (American, 1849-1936). ***San Francisco Waterfront,*** 1922. Oil on canvas. 63.5 x 76.2 cm (25" x 30"). *L15.505. Stolen from a car in Oakland, CA on May 13, 2015.

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* Numbering for the year 2015 Cumulative Index of Stolen Art began with the last issue, Vol. 16, nos. 1&2.

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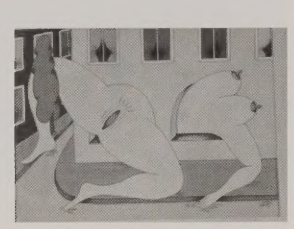

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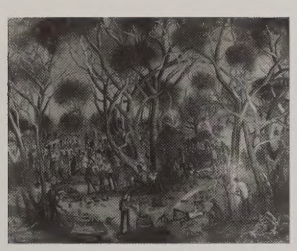

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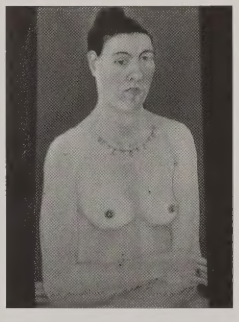

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103

104

98. **MARIE-LOUISE EKMAN** (Swedish, born 1944). ***In the City.*** Gouache on silk. 88.01 x 111.99 cm (approx. 34 ¾" x 44"). *L15.328. Stolen from a private residence in Kivik, Sweden on March 30, 2015. See also item nos. 121-123; 132, 133; 138-143; 145, 146.

99. **PRO HART** (Australian, 1928-2006). ***The Picnic,*** 1975. Oil on board. 59.99 x 73.99 cm (approx. 23 ½" x 29 ¼"). *L15.423. Stolen from a private residence in Camberwell, Victoria, Australia on April 29, 2015.

100. **ISHBEL MYERSCOUGH** (British, born 1968). ***Self-Portrait,*** 1990. Oil on panel. 45.01 x 35 cm (approx. 17 ¾" x 13 ¾"). *L15.309. Stolen from a storage unit in Budapest, Hungary on January 1, 2001.

101. **RICHARD POUSETTE-DART** (American, 1916-1992). ***Small Presence,*** 1965. See color photo on inside back cover.

102. **THEODORE CASIMIR ROUSSEL** (French, 1847-1926). ***The Thames at Hurlingham.*** See color photo on inside back cover.

103. **MASHEL TEITELBAUM** (Canadian, 1921-1985). ***Untitled Landscape,*** 1978. Acrylic on canvas. 56.01 x 72.01 cm (approx. 22" x 28 ¼"). Signed on the verso on the stretcher. *L15.493. Stolen from the University of Toronto in Canada on May 6, 2015.

104. **Unknown Artist** (18th century). ***Putti Picking Grapes with a Goat and a Cask.*** Oil on canvas. 73 x 105 cm (approx. 28 ¾" x 41 ¼"). *L15.392. Stolen from a private residence in Versailles, France on October 1, 2008.

105. **ADOLF WALD** (German, 19th-20th centuries). ***The Battle of the Hessian Uhlan Regiment Against Napoleonic French 1813 in Hesse-Darmstadt,*** 1905. Oil on canvas. 130 x 200 cm (approx. 51 ¼" x 78 ¾"). *L15.178. Stolen from a private residence in Berlin, Germany on November 15, 2013.

105

The following four paintings were stolen from a private residence in Stocksund, Sweden on June 5, 2015. *L15.595:

106. **FREDERIK DE MOUCHERON** (Dutch, 1633-1686). ***Landscape with Cows.*** Oil. 49.99 x 54.99 cm (approx. 19 ¾" x 21 ½").

106

107. **AUGUST HAGBORG** (Swedish, 1852-1921). ***Musselplockerska.*** Oil. 35 x 40.01 cm (approx. 13 ¾" x 15 ¾").

107

108. **WILHELM VON WRIGHT** (Swedish-Finnish, 1810-1887). ***Still Life.*** Oil. 49.99 x 59.99 cm (approx. 19 ¾" x 23 ½").

108

109. **Unknown Artist**. ***St. Mark's Square, Venice.*** Oil on canvas. 59.99 x 75.01 cm (approx. 23 ½" x 29 ½").

109

The following two paintings by **ADAM CLOSS** (English, contemporary) were among nine stolen from storage in Chard, England on August 1, 2011. *L15.378:

110. ***Herald of Dawn,*** 2006. Oil on canvas. 135.99 x 111 cm (approx. 53 ½" x 43 ¾").

110

111. ***Waterfront 2***, 2004. Acrylic on canvas. 96.52 x 76.2 cm (38" x 30").

111

STOLEN ART (cont.)

112

113

The following two paintings were stolen in Hélécine, Belgium on January 24, 2015. *L15.325:

112. **JEAN-BAPTISTE HENRI DURAND-BRAGER** (French, 1814-1879). ***Marine – Seascape.*** Oil on panel. 46.99 x 77.01 cm (18 ½" x 30 ⅜").

113. **LOUIS ROBBE** (Belgian, 1806-1887). ***Sheep in a Field.*** Oil on canvas. 51.99 x 75.01 cm (approx. 20 ½" x 29 ½"). Signed l/l.

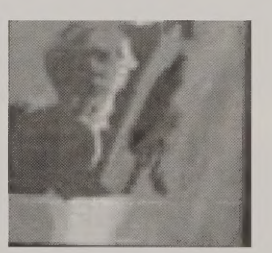
115

114

The following two paintings by **JULES ADOLPHE AIMÉ LOUIS BRETON** (French, 1827-1906) were stolen from the Musées royaux d'Art et d'Histoire in Brussels, Belgium on March 16, 2015:

114. ***Couple Kissing,*** 1851. Oil on canvas. 35.51 x 44.5 cm (approx. 14" x 17 ½"). Inv. no. VDN40. *L15.256.

115. ***La Glaneuse,*** 1898. Oil on canvas. 55.5 x 38.99 cm (approx. 21 ¾" x 15 ⅜"). Signed l/l. Inv. No. VDN39. *L15.253.



116

117

The following two paintings were stolen from a gallery in Dusseldorf, Germany on March 17, 2015. *L15.319:

116. **RICHARD PETTIBONE** (American, born 1938). ***Andy Warhol Self-Portrait,*** 1976 (detail). Ink and acrylic on canvas. 7.62 x 7.62 cm (3" x 3"). Ed. No. 9/25.

117. **RICHARD PETTIBONE.** ***Marilyn,*** 1976 (detail). Acrylic on canvas. 5.69 x 5.11 cm (approx. 2 ¼" x 2").

MIXED MEDIA

118

118. **BRIAN ALFSRED** (American, born 1974). ***Collage – Road Scene,*** c. 1990-2005. Collage on paper. 8 x 15.24 cm (approx. 3 ¼" x 6"). *L15.172. Stolen in transit between Sarasota, FL and Newtown Square, PA on December 22, 2012.

119

119. **BERNI ANTONIO** (Argentina, 1905-1981) ***Juanito and the Cosmonauts,*** 1962. Mixed media on panel. *L15.181. Stolen in transit in Buenos Aires, Argentina on July 26, 2008.

120. **TOM WESSELMAN** (American, 1931-2004). ***Monica with Crossed Beads,*** 1988. See color photo on inside back cover.

The following three mixed media works were stolen from a private residence in Kivik, Sweden on March 30, 2015. *L15.328. See also item nos. 98; 132, 133; 138-143; 145, 146:

122

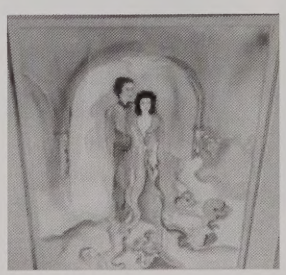
121. **OYVIND FAHLSTROM** (Swedish, 1928-1976). ***Eddie in the Desert.*** See color photo on inside back cover.

122. **RICHARD HAMILTON** (English, 1922-2011). ***Fashion Plate.*** Mixed media. Ed. no. 28/70.

123. **CARSTEN REGILD** (Swedish, 1941-1992). Untitled. Collage. 100 x 80 cm (approx. 39 ⅜" x 31 ½").

123

WORKS ON PAPER



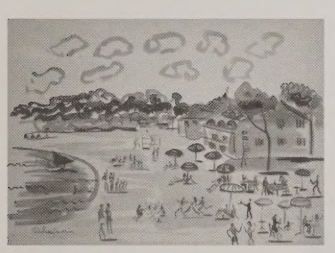
124

124. **JANE BAZINET** (American, contemporary). ***Couple Portrait,*** 1995. Painting on paper. 250 x 200 cm (98.42 x 78.74 in). *L15.233. Stolen from a private residence in Framingham, MA on March 9, 2015.

125

126

127



128

129

130

131

STOLEN ART (cont.)

125. **WILL BOONE** (American, born 1982). ***Untitled (Black Sabbath),*** 2013. Acrylic and silkscreen on paper. 66.24 x 53.34 cm (26" x 21"). *L15.527. Stolen from a book fair at MoCA, Los Angeles on February 1, 2014.

126. **JAMES MONTGOMERY FLAGG** (American, 1877-1960). ***Standing Masked Nude Woman Emerging from the Pits of Hell,*** 1935. Watercolor on paper. 3.98 x 29.21 cm (21 /1/4" x 11 ½"). *L15.336. Stolen from a private residence in Malibu, CA on April 9, 2015. See item nos. 135-137.

127. **FRANZ KLINE** (American, 1910-1962). ***Black Cat,*** 1950. Watercolor on paper. 30.48 x 25.4 cm (12" x 10"). Initialed "FK" l/r. *L15.496. Stolen from a private residence in Guilford, CT on January 13, 2004.

The following four works on paper by **JOHN PATTY CARSTAIRS** (English, 1910-1970) were stolen from a gallery in London, England on October 29, 2010. *L15.414:

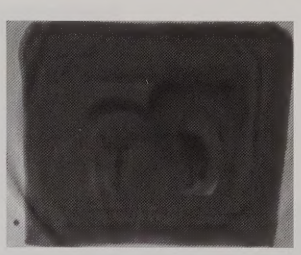
128. ***Afternoon at the Beach,*** 1950. Pen, ink, and gouache on paper. 35 x 49.99 cm (approx. 13 ¾" x 19 ½").

129. ***Grand Canal, Venice,*** 1950. Pen, ink, and gouache on paper. Inscibed: Gran Canale, Venice.

130. ***Rabat,*** 1950. Pen, ink, and gouache on paper. 40.01 x 49.99 cm (approx. 15 ¾" x 19 ¾").

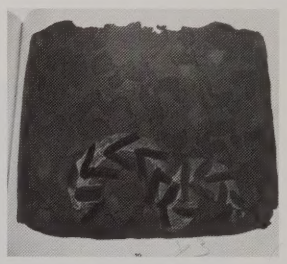
131. ***Samba in Brasilia,*** 1950. Pen, ink, and gouache on paper. 48.01 x 62 cm (approx. 19" x 24 ⅖").

The following 2 works by **HOWARD HODGKIN** (English, born 1932) were stolen from a private residence in Kivik, Sweden on March 30, 2015. *L15.328. See also item nos. 98; 138-143; 145, 146.



132

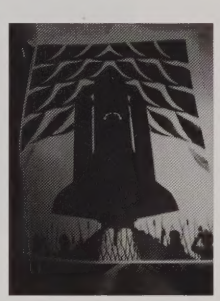
132. ***Palm.*** Watercolor. 27.51 x 35.51 cm (approx. 10 ¾" x 14").



133

133. **Snake.** Watercolor. 29.01 x 35.99 cm (approx. 11 ⅜" x 14 ¼").

PRINTS, ETCHINGS, LITHOGRAPHS

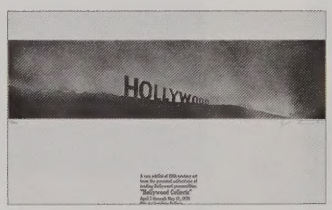


134

134. **ROGER BROWN** (American, 1941-1997). ***Cathedrals in Space,*** 1983. Lithograph on silk. 101.6 x 76.2 cm (approx. 40" x 30"). Ed. no. 14/65. *L15.518. Stolen from a private residence in San Francisco, CA on June 20, 2012.

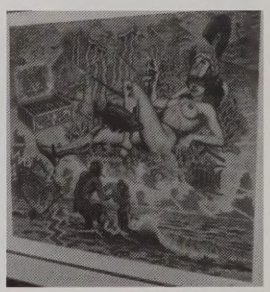
The following works were stolen from a private residence in Malibu, CA on April 9, 2015. *L15.336. See item no. 126.

135. **ROY LICHTENSTEIN** (American, 1923-1997). ***Salute to Aviation*** (Corlett 63), 1968. See color photo on inside back cover.



136

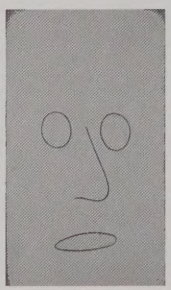
136. **EDWARD RUSCHA** (American, born 1937). ***Hollywood Collects,*** 1970. Lithograph. Signed l/r. 60.96 x 91.44 cm (24" x 36"). Ed. no. 29/220.



137

137. **ROBERT WILLIAMS** (American, born 1943). ***Queen of Atlantis.*** Lithograph. Ed no: 12/50. 66.04 x 80.01 cm (26" x 31 ½").

The following 6 works were stolen from a private residence in Kivik, Sweden on March 30, 2015. *L15.328. See also item nos. 98; 132, 133; 145, 146:

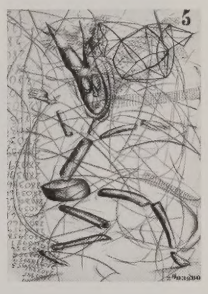


138

138. **JONATHAN BOROFSKY.** ***Spacehead.*** Lithograph. Ed. No. 22/25.

STOLEN ART (cont.)

140

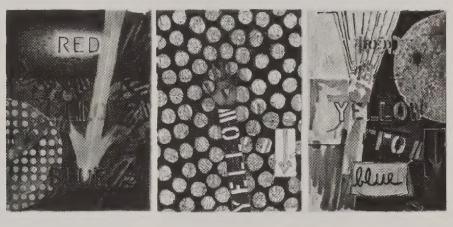


139

139. **JONATHAN BOROFSKY** (American, born 1942). ***Stick Man,*** 1983. Lithograph. Ed. No. 20/27.

140. **RICHARD HAMILTON** (English, 1922-2011). ***Meninas,*** 1973. Etching.

141. **JASPER JOHNS** (American, born 1930). ***Red Yellow Blue*** (triptych), 1982. Etching. Each panel approx. 124.76 x 75.56 cm (49" x 29 ¾").



141

142. **JASPER JOHNS.** ***Periscope Red Yellow Blue.*** See color side back cover.

143. **PABLO PICASSO** (Spanish, 1881-1973). ***Danseurs et musician,*** 1959. See color photo on inside back cover.

PHOTOGRAPHS

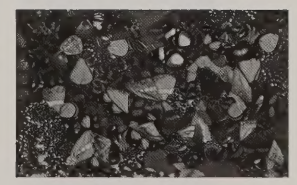
144

144. **HORATIO ROSS** (Scottish, 1801-1886). ***Tree in Leaf,*** c. 1850. Waxed paper negative. 27.94 x 34.29 cm (11" x 13 ½"). *L15.144. Stolen from a gallery in Toronto, Canada on October 1, 2013.

The following 2 works by **NATHALIA EDENMONT** (Russian, born 1970) were stolen from a private residence in Kivik, Sweden on March 30, 2015. *L15.328. See also item nos. 98; 121-123; 132, 133; 138-143:

145

145. ***Christmas.*** C-print mounted on Perspex. Ed. no. 6.



146

146. ***Mastery.***

ICONS

147. **Unknown Artist** (Swiss, 12th century). ***Religious icon***. Black and brown painted wood panel. 15.01 x 40.4 cm (approx. 6" x 15 ¾"). *L15.51. Stolen from a private residence in Scottsdale, AZ on April 5, 2015.

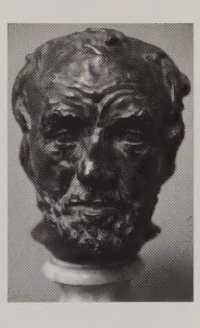
147

SCULPTURE

148. **ERTÉ** (Russian/French, 1892-1990). ***Aphrodite,*** 1970. Bronze. 50.8 x 20.32 x 20.32 cm (20" x 8" x 8"). Ed. no. 109-375. *L15.376. Stolen from a private residence in Los Altos, CA on May 18, 2013.

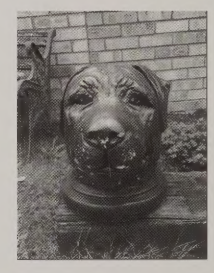
148

149. **AUGUSTE RODIN** (French, 1840-1917). ***The Man with the Broken Nose,*** 1863. Bronze. Ht: 25.5 cm (approx. 10"). *L15.1. Stolen from the Ny Carlsberg Glyptotek Museum in Copenhagen, Denmark on July 16, 2015.



149

150. **Unknown Artist** (English, 20th century). ***Dog Head.*** Stone. 59.99 x 30 cm (approx. 23 ½" x 11 ¾"). *L15.547. Stolen from a private residence in Hertfordshire, England on May 1, 2015.



150

151. **Unknown Artist** (English, 18th-19th centuries). ***Toga-wearing Cherub.*** Lead. 45.72 x 7.62 cm (18" x 3"). *L15.560. Stolen from a private residence in Henley-on-Thames, England on May 18, 2015.

151

The following three works were stolen from a private residence in Saint-Priest-en-Murat, France on May 6, 2015. *L15.497:

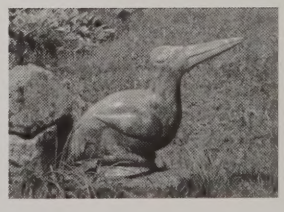
152

152. **JOSIAH MANZI** (Zimbabwean, born 1933) ***Giraffe Bird,*** 2001. Black serpentine. 80.01 x 19.99 cm (approx. 31 ½" x 7 ¾").

153. **LACKNOS CHINGWARO** (Zimbabwean, born 1980). ***Hibiscus,*** no. 04-989, 2002. Green serpentine.

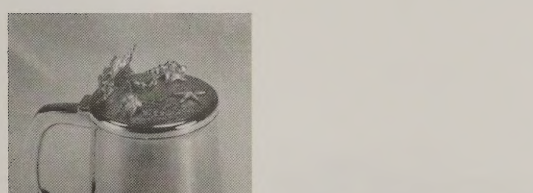
153

154. **LACKNOS CHINGWARO**. ***Pelican,*** 2000. Green serpentine. 40.01 x 30 cm (approx. 15 ¾" x 11 ¾").



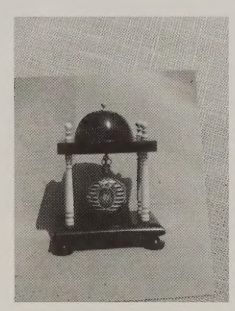
154

155



156

157



158

STOLEN ART (cont.)

155. The six medieval stone heads (at left) by an **Unknown Artist** were stolen from a residence in Dorchester, England on February 28, 2015. *L15.624.

DECORATIVE ITEMS

SILVER

156. ***Tankard.*** Silver. 19.99 x 11.99 x 11.99 cm (approx. 7 ¾" x 4 ¾" x 4 ¾"). Maker's mark: JMMG. *L15.563. Stolen from a private residence in Hatfield, England on May 22, 2015.

CLOCKS, TIMEPIECES, WATCHES

157. **JOHN DEARDS** (17th century). ***Repeating Pocket Watch.*** Gold with a diamond stud clasp in an enamel case on an ebony and ivory stand. 5.08 x 5.08 x 2.54 cm (2" x 2" x 1"). Initialled "JB." *L15.395. Stolen from a private residence in Bedfordshire, England on November 5, 2014.

MISCELLANEOUS

158. ***Etui Lighter,*** c. 1800. Agate with gold fittings and a diamond stud opener. 12.7 x 6.35 x 3.81 cm (5" x 2 ½" x 1 ½"). *L15.395. Stolen from a private residence in Bedfordshire, England on November 5, 2014.

MISSING ART*

PAINTINGS

25. **HERMANUS BERSERIK** (Dutch, 1921-2002). ***Flauwers Haven,*** 1991. Oil painting. 70 x 100 cm (approx. 27 ½" x 39 ⅜"). *L15.315. Missing in The Hague, The Netherlands on March 19, 2015

25

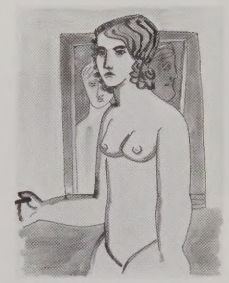
WORKS ON PAPER

The following three works on paper by **JOHANN GEORG MÜLLER** (German, 1913-1986) were missing from an art archive in Duisberg, Germany on November 1, 2013. *L15.347:

26. ***Abstract Composition,*** 1950. Watercolor and pencil on cardboard. 30 x 40.01 cm (approx. 11 ¾" x 15 ¾"). l/r: monogram and date "ii.1950." Scholzer/Roeber no. 154.

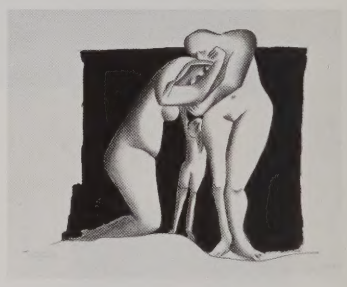
26

27. ***Act,*** c. 1950-59. Watercolor, pen and ink on paper. 62.99 x 48.49 cm (approx. 24 ¾" x 19"). L/l: the monogram "JGM." Scholzen/Roeber no. 557.



27

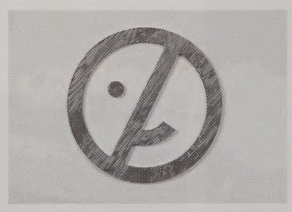
28. ***Consolation,*** 1976. Colored pencil, ink brush and pen on paper. 32 x 40.01 cm (approx. 12 ½" x 15 ¾"). l/l: Signed "Joh.Georg" and dated 9.1976. Scholzen/Roeber no. 1424.



28

SCULPTURE

29. **NATE LOWMAN** (American, born 1979). ***Woody***, 2013. Wood. 105.99 x 86.51 x 86 cm (approx. 41 ¾" x 34" x 33 ¾"). *L15.359. Missing in transit between Geneva, Switzerland and London, England on February 1, 2015.



29

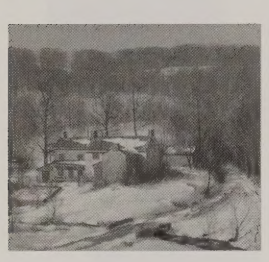
30. **JEAN-ANTOINE HOUDON** (French, 1741-1828). ***Bust of Diana,*** 1780. White marble. H: 65 cm (approx. 25 ½"). *W15.29. Missing during move from the National Museum in Warsaw to Krakow on November 1, 1940.

30

* Numbering for the year 2015 Cumulative Index of Missing Art began with the last issue, Vol. 16, nos. 1&2.

RECOVERED ART*

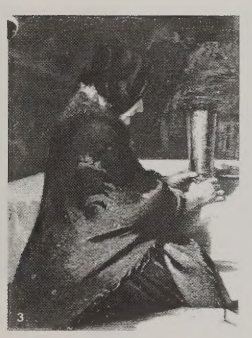
PAINTINGS



9

9. **KENNETH R. NUNAMAKER** (American, 1890-1957). ***Tony's Place.*** Oil on canvas. 55.88 x 60.96 cm (22" x 24"). *L2013.786. *R1740. Lost in transit in New York on April 8, 2013. Recovered with the help of the ALR during a search of an auction house sale catalogue in May 2015.

The following six paintings, stolen from Amsterdam's Historische Museum and Stedelijk Museum on January 14, 1972, were recovered with the help of the ALR during a search of an auction sales catalogue in 2012 and returned to the museum in 2015. *L08.860 and *L08.870. *R1431:



10

10. **AUGUST ALLEBÉ** (Dutch, 1838-1927). ***Elderly Woman.*** Oil on panel. 29.49 x 21.49 cm (approx. 11 ½" x 8 ½"). Inv. no. A 134.

11

11. **FREDERIK HENDRIK KAEMMERER** (Dutch, 1839-1902). ***Pipe-playing Shepherd Boy and Sheep.*** Oil on canvas. 25.5 x 15.49 cm (approx. 10" x 6"). Inv. no. SA 231.

12

12. **CHARLES ROCHUSSEN** (Dutch, 1814-1894). ***Anno 1692. The Death of General Hans Willem van Aylva.*** Oil on canvas. 38.99 x 56.01 cm (approx. 15 ¼" x 22"). Inv. no. SA 4977.

13

13. **EMILE EISMAN SEMENOWSKY** (French, 1857-1911). ***Artist and Sleeping Muse.*** Oil on panel. 24.51 x 32.99 cm (approx. 9 ½" x 13"). Inv. no. SA 188.

14

14. **CHARLES VAN BEVEREN** (Belgian, 1809-1850). ***Terpsichore.*** Oil on panel. 40.01 x 35 cm (15 ¾" x 13 ¾"). Inv. no. SA 1820.

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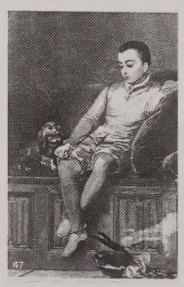
* Numbering for the year 2015 Cumulative Index of Recovered Art began with the last issue, Vol. 16, nos. 1&2.

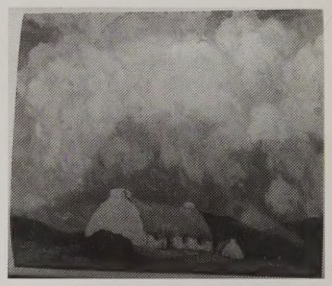
15. **FLORENT WILLEMS** and **DAVID DE NOTRE** (Belgian, 1823-1905). ***A Sitting Boy with Dog.*** Oil on panel. 37.01 x 29.01 cm (approx. 14 ½" x 11 ⅜"). Inv. no. SA 1916. *L08.870.



15

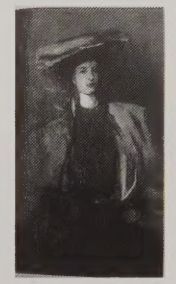
The following three paintings, stolen from a private residence in Donard, County Wicklow, Ireland on October 22, 2014, were recovered on July 28, 2015 after a worker found them hidden in hedges in County Wicklow. *L14.1144 (*IFAR Journal*, Vol. 16, nos. 1&2):

16. **PAUL HENRY** (Irish, 1877-1958). ***Landscape with Cottage,*** c. 1930s. Oil on canvas. 35.51 x 40.49 cm (approx. 14" x 16").



16

17. **SIR JOHN LAVERY** (Irish, 1856-1941). ***Portrait de Femme au Châpeau (Portrait of Lady with Hat),*** c. 1900-1920. Oil on panel. 42.8 x 24 cm (approx. 16 ¾" x 9 ½"). Signed l/l "to/ Egon Hessling J Lavery".



17

18. **JACK BUTLER YEATS** (Irish, 1871-1957). ***The Fern in the Area,*** 1950. Oil on canvas. 42.01 x 54.99 cm (approx. 16 ½" x 21 ½").

18

PRINTS, ETCHINGS, LITHOGRAPHS

19. **PABLO PICASSO** (Spanish, 1881-1973). ***Buste de femme à la chaise (Dora Maar),*** 1938. *L2012.844. *R1564. Etching, scraper, aquatint, and engraving on paper. 24.84 x 14 cm (approx. 9 ¾" x 5 ½"). On verso: Marina Picasso stamp no. 20960. Bloch 308. Stolen from a private residence in Stamford, CT on August 31, 2012. Recovered with the help of the ALR in March 2015.

19

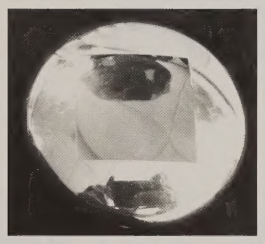
SCULPTURE

20

20. **AUGUSTE RODIN** (French, 1840-1917). ***Young Girl with Serpent.*** Bronze. 40.01 x 15.19 x 16.99 cm (approx. 15 ¾" x 6" x 6 ¾"). Georges Rudier cast no. 9. Interpol no. 1993/19399-1.2. *N91.311. Stolen from a private residence in Beverly Hills, CA on August 9, 1991. Recovered with the help of Art Recovery Group in New York in July 2015.

DECORATIVE ARTS

JEWELRY



21

21. **ANISH KAPOOR** (Indian/British, born 1954). ***Water Pendant, Form IV,*** 2012. 18 ct. white gold exterior with rose interior. 7.29 x 7.29 x 4.19 cm (approx. 2 ¾" x 2 ¾" x 1 ½"). Signed. Ed. no. 2/5. *L2013.190. *R1741. Lost in a cab in London on February 11, 2013. Recovered with the help of the ALR in May 2015.

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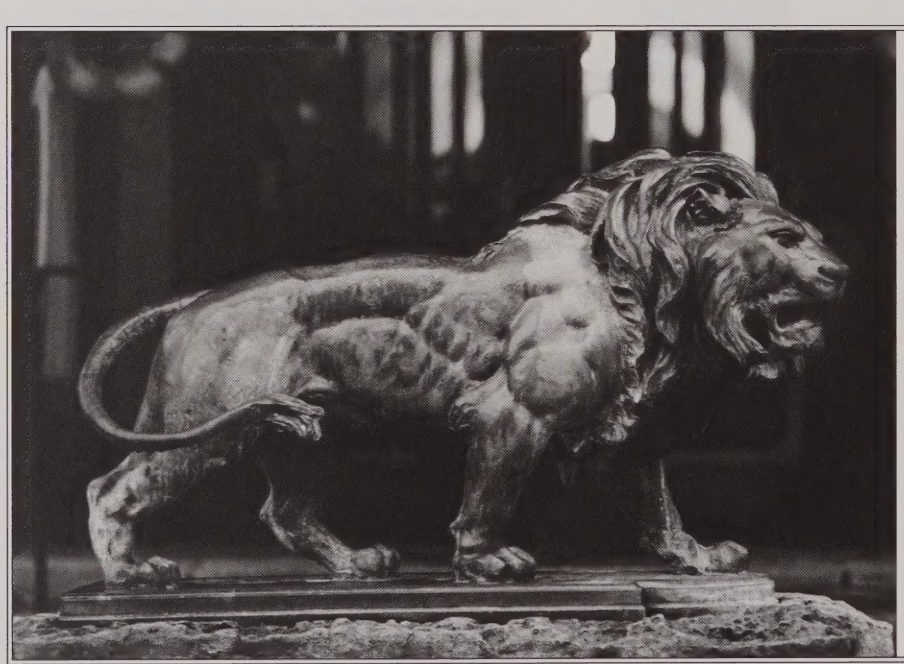

STILL MISSING

EDWARD CLARK POTTER
(1857-1923)

"Leo the Lion," circa 1920.
Bronze. Approx. 3 ft. x 4 ft. x 2 ft.
*N93.220.1.

Stolen from a golf club in Mamaroneck, NY on April 26, 1993.

If you have information, please contact:

Colin A. Burns, tel: (914) 698-8400

STOLEN ART

PAINTINGS

101. **RICHARD POUSETTE-DART** (American, 1916-1992). ***Small Presence,*** 1965. Oil on masonite. 33.65 x 24.76 cm (13 ¼" x 9 ¾"). *L15.791. Stolen from a private residence in Chestnut Hill, MA on August 22, 2014.

101

102. **THEODORE CASIMIR ROUSSEL** (French, 1847-1926). ***The Thames at Hurlingham.*** Oil on canvas. 76 x 64.01 cm (approx. 30" x 25 ¼"). Signed l/r. *L15.147. Stolen from a London gallery on February 6, 2015.

102

MIXED MEDIA

120. **TOM WESSELMAN** (American, 1931-2004). ***Monica with Crossed Beads***, 1988. Steel laser cutout. 29.01 x 19 cm (approx. 11 ⅜" x 7 ½"). *L15.319. Stolen from a gallery in Dusseldorf, Germany on March 17, 2015.

120

121. **OYVIND FAHLSTROM** (Swedish, 1928-1976). ***Eddie in the Desert.*** Collage. 72.01 x 100.99 cm (approx. 28 ⅜" x 39 ¾"). *L15.328. Stolen from a private residence in Kivik, Sweden on March 30, 2015. See also item nos. 122, 123; 132, 133; 138-141; 145. 146.

121

PRINTS, ETCHINGS, LITHOGRAPHS

135. **ROY LICHTENSTEIN** (American, 1923-1997). ***Salute to Aviation*** (Corlett 63), 1968. Screenprint. Ed. no.: 131/135. 107.95 x 54.61 cm (42 ½" x 21 ½"). *L15.336. Stolen from a private residence in Malibu, CA on April 9, 2015. See also item nos. 126; 136, 137.

135

The following two items were stolen from a private residence in Kivik, Sweden on March 30, 2015. *L15.328. See also item nos. 98; 121-123; 132, 133; 138-141; 145, 146:

142. **JASPER JOHNS** (American, born 1930). ***Periscope Red Yellow Blue.*** Lithograph. 86.11 x 61.21 cm (34" x 24"). Ed. No. 18/88.

142

143. **PABLO PICASSO** (Spanish, 1881-1973). ***Danseurs et musician***, 1959. Linoleum block print. 53.01 x 62.99 cm (approx. 20 ¾" x 24 ¾"). Bloch 939.

143

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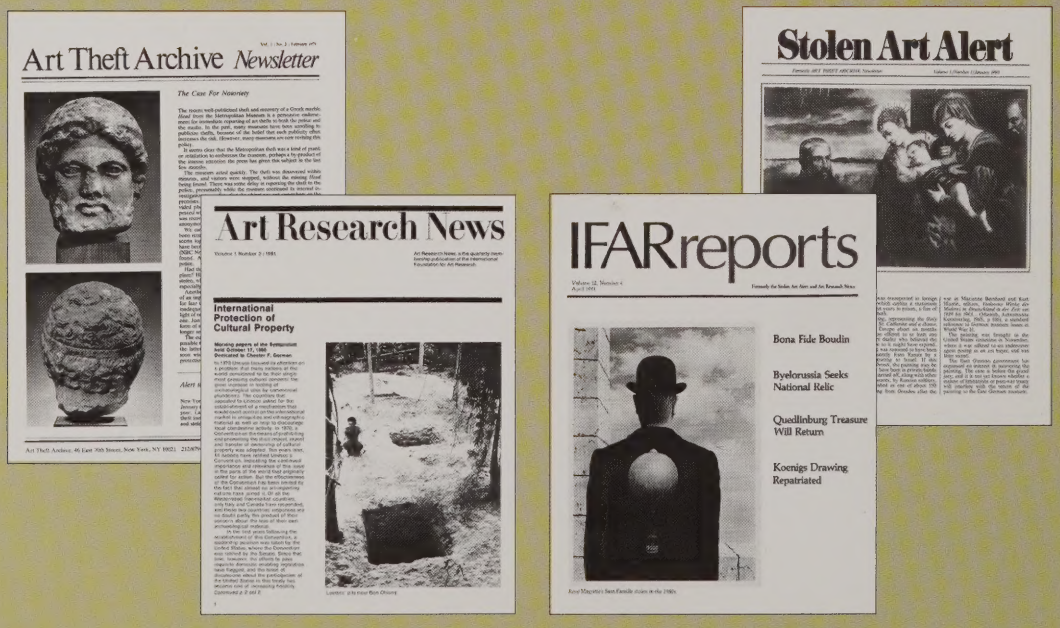
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